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SUPREME COURT OF THE UNITED STATES.

No. ~~357.~~ 93

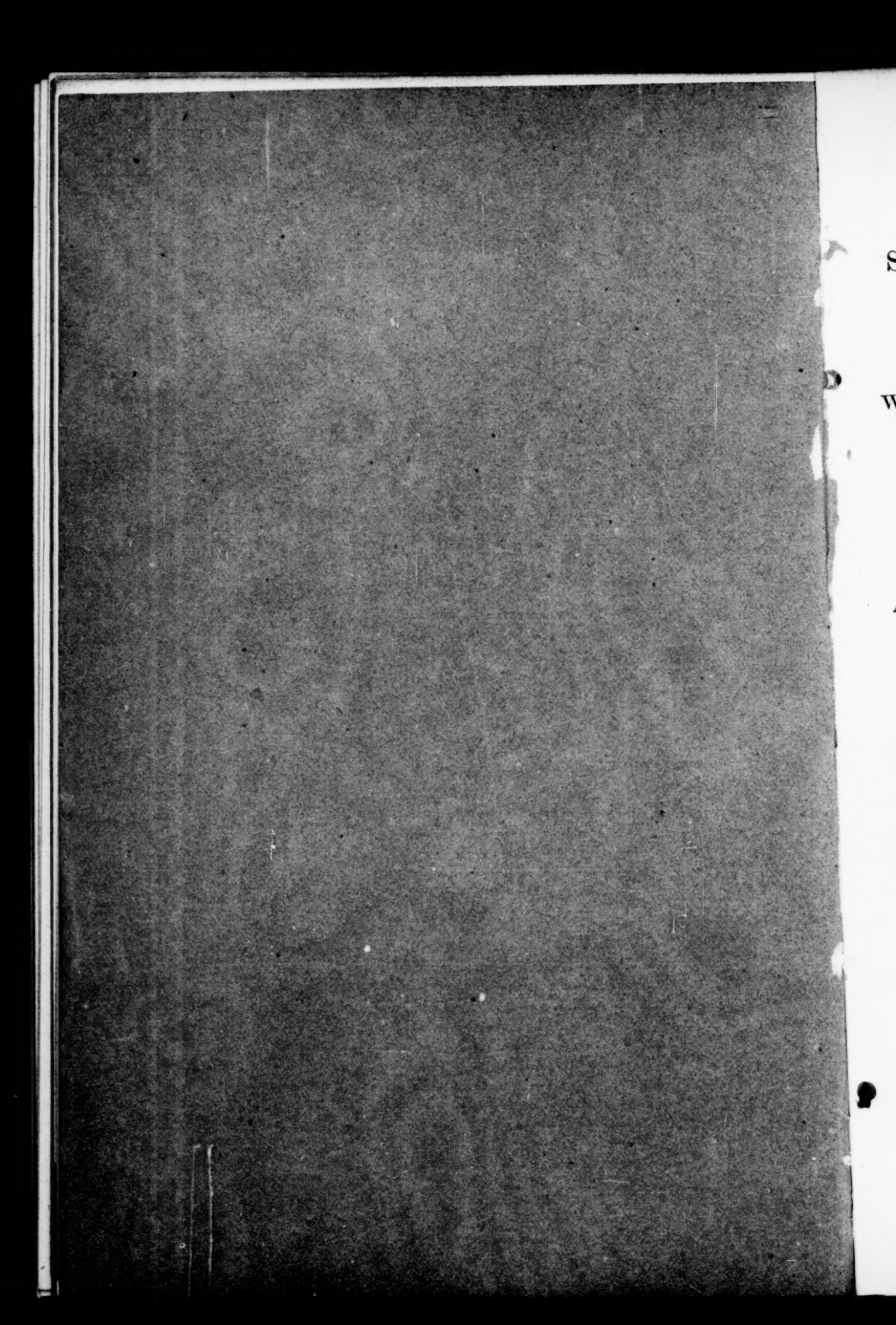
WILLIAM G. PERRIS, FOR HIMSELF AND AS ADMINISTRATOR OF WILLIAM PERRIS, DECEASED, AND HENRY H. BROWNE, APPELLANTS,

vs.

ERNEST HEXAMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED FEBRUARY 17, 1876.



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1 WILLIAM G. PERRIS, FOR HIMSELF AND as administrator of William Perris, deceased, and Henry H. Brown
vs.
ERNEST HEXAMER.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable, the judges of the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit.

Of October sessions, 1874. No. 99.

It is thus contained:

Be it remembered, that on the eleventh day of December, in the year of our Lord one thousand eight hundred and seventy-four, Francis Forbes, esquire, comes into our said court here and files the bill
2 of complaint of William G. Perris, for himself and as administrator of the estate of William Perris, deceased, and Henry H. Browne, complainants, against Ernest Hexamer, defendants, which said bill of complaint is as follows, to wit:

In the circuit court of the United States, eastern district of Pennsylvania. In equity.

To the honorable, the judges of the circuit court of the United States for the eastern district of Pennsylvania:

William G. Perris, of the city of New York, a citizen of the State of New York, for himself and as administrator of William Perris, formerly of the city of Brooklyn, in the State of New York, but now deceased, and Henry H. Browne, of said city of Brooklyn, and a citizen of the State of New York, the said William G. Perris and Henry H. Browne doing business as partners in the city of New York, under the name or style of Perris & Browne, bring this, their bill of complaint, against Ernest Hexamer, defendant, residing and doing business at Philadelphia, in the State of Pennsylvania, and a citizen of Pennsylvania.

And, thereupon, your orators complain and say, upon information and belief, that heretofore, and before the 28th day of May, 1852, the said William Perris, being then in full life, and being then a resident of the United States, and residing in the southern district of New York, was the author and composer of a book or series of maps entitled "Maps of the city of New York, surveyed under directions of insurance companies of said city, by William Perris, civil engineer and surveyor, 1852. Volume 1, comprising the 1st, 2nd, 3rd, and 4th wards. The maps exhibit each lot and building, and the classes are shewn by different coloring and characters set forth in the reference." That the said William Perris printed and published said work, and did, before publication of said work, deposit a printed copy of the aforesaid title thereof in the clerk's office of the southern district of New York, on the 28th day of May, 1852, which title was thereupon, on that day, recorded by the said clerk, in which district the said William Perris then resided, as by said record, or a duly authenticated copy thereof, here in court ready to be produced, will fully appear; and that the said Will-
3 iam Perris, before he published said work, duly complied with

and fulfilled all the other requirements and provisions of the law in such case made and provided, and became entitled to, and acquired the sole right and liberty of printing, reprinting, publishing, and vending the said book, in whole or in part, for the term of twenty-eight years from the time of recording the said title as aforesaid; that the said William Perris, after the recording of the title thereof, and complying with said requirements and provisions of the law, as aforesaid, and on or about the 21st day of January, 1863, departed this life intestate, being at the time a resident of Brooklyn, Kings County, in the State of New York, and letters of administration of all and singular the goods and chattels whereof the said William Perris died possessed, were granted in due form of law by the surrogate of the said county of Kings to your orator, William G. Perris, on the 21st day of February, 1863, as by reference to said letters of administration, or a duly authenticated copy thereof, here in court ready to be produced, will fully appear.

And your orators further show unto your honors that the said William Perris on his death, left him surviving, as his only heirs, the said William G. Perris and Frances Mary Browne, his only surviving children, who were both then of lawful age, and Jane Perris, his widow; and that on or about the 6th day of February, 1863, the said William G. Perris, Frances Mary Browne, and Jane Perris, and the said Henry H. Browne, entered into articles of agreement, bearing date the said 6th day of February, 1863, for the amicable distribution of the estate of said decedent, wherein and whereby it was mutually agreed that your orators, William G. Perris and Henry H. Browne, should become possessed and own the business of said decedent, and all the printing materials, books, maps, plates, and every article or thing thereunto in any way belonging, in the proportion to each of one undivided half thereof, subject to certain conditions and provisions therein mentioned, in consideration of which said conditions the said Jane Perris and Frances Mary Browne, in and by said indenture granted and conveyed to your orators, William G. Perris and Henry H. Browne, all their right, title, and interest and claim in the property and business of said decedent, as by the said articles of agreement, or a duly authenticated copy thereof, here in court, ready to be produced, will more fully appear.

And your orators further show unto your honors that afterwards, to wit, on or about the 30th day of March, 1863, and after the issuing of said letters of administration as aforesaid, the said William G.
4 Perris, Frances M. Browne, Henry H. Browne, and Jane Perris, by another indenture, dated the said 30 March, 1863, confirmed the said indenture of the 6th of February, 1863, as by said last indenture of 30 March, 1863, or a duly authenticated copy thereof, here in court, ready to be produced, will more fully appear.

And your orators aver that by virtue of the indentures aforesaid, which have both been duly acknowledged and recorded, your orators, William G. Perris and Henry H. Browne, have been ever since the said 6th day of February, 1863, and are now entitled to and possessed of the sole and exclusive right and liberty within and throughout the United States of printing, reprinting, publishing, and vending the said work so copyrighted as aforesaid, and have a right to all the benefits to be derived from the ownership or property thereof for the portion unexpired of the said term of twenty-eight years, from the time of the recording said title as aforesaid, and that said rights have been and are of great value to them, and that they are entitled to all damages sustained by them from the infringement of said copyright by said defendant or

others, and that inasmuch as said indentures contain conditions and provisions for the benefit of the estate or of the heirs of said decedent, the said William G. Perris is named in this bill as one of the complainants, in the character of administrator of said decedent.

And your orators further show unto your honors, on information and belief, that the said defendant, Ernest Hexamer, well knowing the premises, and the rights and privileges secured, as aforesaid, to your orators, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would have accrued to them, has unlawfully, and without the consent of your orators, printed, published, and sold, or caused to be printed, published, and exposed to sale, many copies of the said work, or some part or parts thereof, in the city of New York, in the city of Philadelphia, in the State of New Jersey, and in other places in the United States, since the recording of said title and since the said 6th day of February, 1863, and within two years last past and before the commencement of this suit; and that the said defendant has in his possession or power a number of copies of the said copyrighted work, or of some part or parts thereof, and threatens to continue and to persist in publishing and selling the same.

And your orators further show unto your honors that the said defendant has been warned and requested and notified to desist and refrain from said infringement; but that said warning and request have been wholly disregarded by him, and that he still continues the infringement and unlawful and wrongful acts aforesaid, all which actings and doings are contrary to equity and good conscience, and tend to the injury of your orators in the premises.

And your orators pray that the said defendant may be compelled by a decree of this court to give an account of all such infringing copies of said copyrighted work, or of any part thereof, printed, or published, or sold, or exposed to sale by or for him, and also to account for and pay over to your orators all damages which they have sustained by reason of said infringements, and also to forfeit and deliver to your orators all infringing copies of said work remaining in his possession or power, and also the plates on which the same have been copied, and the sum of one dollar for every sheet of such copies, and that the said defendant, his agents, servants, and workmen may be enjoined and restrained by the decree and injunction of this court, from directly or indirectly printing, importing, publishing, selling, or offering for sale, the said work so copyrighted as aforesaid by the said William Perris, deceased, or any part thereof; and that the defendant may be decreed to pay the costs of this suit, and that your orators may have such other or further relief as the equity of the case may require and to your honors may seem meet, in consideration whereof, and forasmuch as your orators cannot have adequate relief save in a court of equity.

To the end, therefore, that the said Ernest Hexamer may, if he can, show why your orators should not have the relief hereby prayed, and may upon his corporal oath full, true, direct, and perfect answer make, according to the best of his or his agents', clerks', and servants' knowledge, information, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated paragraph by paragraph, and he and they thereto severally and specifically interrogated,

May it please your honors to grant to your orators a writ of subpœna ad respondendum issuing out of and under the seal of this honorable court, directed to the said defendant, Ernest Hexamer, commanding him by a certain day and under a certain penalty to be and appear in

this honorable court, then and there to make answer unto this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem meet and agreeable to equity.

And your orators will ever pray, etc.

(Signed) WILLIAM G. PERRIS.
HENRY H. BROWNE.

FRANCIS FORBES,
Complainant's Solicitor and of Counsel.

UNITED STATES OF AMERICA,
City and County of New York, ss:

On this 16th day of November, 1874, before me personally appeared William G. Perris and Henry H. Browne, who, being by me duly and severally sworn, depose and say, and each for himself deposeth and saith, that they have read the foregoing bill of complaint by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are stated on information and belief, and as to those matters they believe it to be true. And the said William G. Perris further deposes and says that he is administrator of the estate of William Perris, deceased.

(Signed) WILLIAM G. PERRIS.
HENRY H. BROWNE.

Subscribed and sworn to before me this 16th day of November, 1874.

[L. S.] (Signed) JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

6 UNITED STATES,
Eastern District of Pennsylvania, set.:

The President of the United States to Ernest Hexamer:

For certain causes offered before the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before the judges of the said court, at a session of the same court to be holden at Philadelphia, on the first Monday of January next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And have you then and there this writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this eleventh day of December, 1874, and in the ninety-ninth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

NOTE.—The defendant in this case is required to enter his appearance in the clerk's office of said court on or before the first Monday of January next, otherwise the bill may be taken pro confesso.

Whereupon a subpœna was issued, and on the fourth day of January, A. D. 1875, retur'ed as follows:

(Indorsed:) No. 99. Circuit court, October sess., 1874. William G.

Perris, for himself, and as administrator of William Perris, deceased, and Henry H. Browne, vs. Ernest Hexamer. Subpœna in equity. Returnable on the first Monday of January next. Francis Forbes, solicitor for complainant. Filed January 4, 1875.

December 11th, 1874, at Phila., in my district, served the within writ on Ernest Hexamer by reading the same in his hearing and leaving a true and attested copy thereof with him.

So answers

JAMES N. KERNS,
U. S. Marshal,
P'r JACOB S. DECKER,
Deputy.

7 And afterwards, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy-five, the said defendant, Ernest Hexamer, by Joshua Pusey, esquire, his solicitor, comes into our said court here and files his answer, which is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania.

WILLIAM G. PERRIS, FOR HIMSELF AND AS administrator of the estate of William Perris, deceased, and Henry H. Browne, *vs.* ERNEST HEXAMER.	October sessions, 1874. In equity, No. 99.

The answer of Ernest Hexamer, defendant, to the bill of complaint of the above-named complainants.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefits and advantages of exception to the manifold errors, uncertainties, and insufficiencies in complainants' said bill of complaint, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material for him to make answer unto, answering, saith:

That he is informed and believes, and therefore admits, that William Perris, in said bill of complaint mentioned, was on the 28th day of May, A. D. 1852, the author and composer of a book or series of maps, entitled as in said bill of complaint recited; and that an imprint of said title was on the 28th day of May, A. D. 1852, duly recorded in
8 the clerk's office of the southern district of New York, but this defendant doth not know and is not informed, save by said bill of complaint, whether or not the said William Perris, after he published said work, duly complied with all the requirements and provisions of law in such case made and provided, and became legally entitled to and acquired the sole right and liberty of printing, reprinting, publishing, and vending the said work for the term of twenty-eight years from the time of the recording of the title of the same; and he leaves complainants to make such proof thereof as they may be advised.

This defendant, further answering, saith, it may be true, for anything defendant knoweth to the contrary, that letters of administration of all and singular the goods and chattels of the said William Perris, then

deceased, were properly and legally granted to the complainant, William G. Perris, as set forth in said bill of complaint, and that the said William Perris, decesed, did leave as his only heirs the complainant William G. Perris and Frances Mary Browne, both then of lawful age, and Jane Perris; and that, on or about the 6th day of February, 1863, the said William G. Perris, Frances Mary Browne, and Jane Perris and Henry H. Browne did enter into certain articles of agreement, wherein it was mutually agreed that the complainants, William G. Perris and Henry H. Browne, should own the business of said William Perris, deceased, and every article or thing thereunto belonging, as more particularly set forth in said bill of complaint; and that thereafter the said Jane Perris and the said Frances Mary Browne did, by said indenture, grant and convey to these complainants, William G. Perris and Henry H. Browne, all their right, title, interest, and claims in the property of said William Perris, deceased, as mentioned in said bill of complaint; and that on or about the 30th day of March, 1863, as recited in said bill, the said William G. Perris, Frances M. Browne, Henry H. Browne and Jane Perris did, by another indenture, confirm said indenture of February 6th, 1863; but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning all or any of the same.

And this defendant maketh further answer and saith, that he knoweth not, except as informed by said bill of complaint, further of and concerning any title and right to any privileges or rights that may have been secured to the said William Perris, deceased, by virtue of any copyright of the work aforesaid; or of and concerning any right, title, and interest which may have been acquired by complainants in and to the privileges of such copyright, as set out in said bill;
9 but he leaves complainants to make such proof of all said several matters as they may be advised.

And this defendant, further answering, saith that he admits that he has published and sold since the recording of the title of the said copyrighted work, and within two years last past before the commencement of this suit, to some extent, a certain work, consisting of a series of maps or charts of portions of the city of Philadelphia (but none whatever of the said city of New York); but this defendant, on like information and belief, denies that the said work, or any work so published and sold by him, is a copy, in whole or in part, of the work copyrighted by William Perris, deceased, as aforesaid; or that such work published by this defendant infringes any rights or privileges legally belonging to or vested in said complainants; or prejudices the sale of complainants' work.

And this defendant saith further, that in the years 1857 and 1858, he (in conjunction with Joseph Dietrich and William Locher) copyrighted certain works, consisting of a series of maps or charts of portions of the city of Philadelphia, in which works he, at the suggestion of the said William Perris, made use of certain necessarily arbitrary signs or characters employed by the said William Perris in his copyrighted work aforesaid. And afterwards, for several years, defendant published and sold his said works with the full knowledge, consent and approbation of the said William Perris; in fact, the said William Perris, for and during a period of about one year, to wit, in the years 1861 and 1862, acted as defendant's agent for the sale of said works in the city of New York, and sold divers copies of the same; and this defendant used the characters or signs aforesaid, and published and sold said works for a period of fourteen years, that is to say, from the year 1858 to the year 1872; and in the year 1872, defendant having found the said characters and signs in-

complete and unsatisfactory, substituted other different arbitrary signs or characters, which he has since that time employed in the work, consisting of a series of maps or charts of portions of the city of Philadelphia, as aforesaid; but this defendant, as he is advised and believes, insists that he has a full legal right to print, publish, and sell such work, and that he is in no way liable to said complainants for so doing.

And this defendant denies all intention to injure or destroy any rights or privileges secured to or belonging to complainants, or to deprive them of any gains or profits to which they may be legally entitled by virtue of the premises.

This defendant, further answering, saith, as to the several interrogatories contained in the bill of complaint in this cause, and as to each of them, this defendant is advised and submits that he is not bound to answer the same more perfectly or otherwise than the same are answered heretofore; and he claims the same benefits of objection as if he had demurred to the same or to the discovery sought thereby.

And this defendant prays the same advantages of his said answer, as if he had pleaded or demurred to said bill of complaint; without this, that any matter or thing therein contained, and not specifically answered, admitted or denied, is true to the knowledge of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct; and he prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ERNEST HEXAMER.

JOSHUA PUSEY,
Defendant's Solicitor and of Counsel, &c.

UNITED STATES OF AMERICA,
C. C. Eastern Dist. of Pennsylvania, ss:

Ernest Hexamer, the defendant in the foregoing answer named, being duly sworn according to law, deposes and says that the facts set forth in said answer, so far as stated of his own knowledge, are true; and so far as stated upon information he verily believes are true.

ERNEST HEXAMER.

Sworn and subscribed to before me this 27th day of January, 1875.
SAMUEL BELL,
U. S. Commissioner.

10 And afterwards, to wit, on the fourth day of February, eighteen hundred and seventy-five, said complainants, by their counsel, Francis Forbes, esquire, *and* file their replication to the said defendant's answer, which is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania.

WILLIAM G. PERRIS, FOR HIMSELF AND AS administrator of the estate of William Perris, deceased, and Henry H. Browne,
vs.
ERNEST HEXAMER.

The replication of William G. Perris, for himself and as administrator of the estate of William Perris, deceased, and Henry H. Browne, complainants, to the answer of Ernest Hexamer, defendant.

These repliants, saving and reserving to themselves now and at all

times hereafter all and all manner of benefits and advantages of exception which may be had or may be taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

FRANCIS FORBES,
Complainants' Solicitor and of Counsel.

11 And now, June 19th, 1875, on motion of Joshua Pusey, esquire counsel for respondent in the above case, the court allow an amendment to the answer to be filed, and also grant leave to further cross-examine the witnesses.

12 And afterwards, to wit, on the twenty-fourth day of June, A. D 1875, the said respondents by their solicitor come into our said court here and file their amendment to answer, which is as follows, to wit:

Amendment to answer.

And now the defendant having been granted leave by the court to amend his answer in the following words and figures, to wit, that the same be inserted after the fifth clause of defendant's answer:

And this defendant saith further: That, in the years 1857 and 1858, he (in conjunction with Joseph Dietrich and William Locher) constructed, after great labor, time, and expense of personal surveys and drawings, and copyrighted certain works, consisting of a series of maps or charts of portions of the city of Philadelphia, in which works defendant made use of certain arbitrary signs or characters employed by the said William Perris in his copyrighted work aforesaid, and afterwards, for several years continuously, that is to say, up to the time of the demise of the said William Perris, in the year 1863, defendant openly and publicly published, offered for sale and sold in the said city of Philadelphia and elsewhere, his said works, and, also, other similar maps or charts of other portions of said city, with the full knowledge, consent and approbation of the said William Perris; it fact, he, the said William Perris, for some time during the year 1862, acted as defendant's agent on commission for the sale of his, defendant's, said works in the city of New York, and sold divers copies of the same.

This defendant continued to proceed with the publication and sale, openly and publicly, and with the knowledge of complainants, of his said works, after the death of William Perris aforesaid, until the year 1872, when defendant having considered the said characters or signs theretofore employed by him incomplete, unsatisfactory, and in some cases not sufficiently comprehensive, greatly enlarged and improved the key or reference constructed of the said arbitrary signs and characters, and substituted other substantially different signs and characters, or, in some instances, similar characters, but with a signification materially dif-

ferent from that of the said signs or characters then previously used by him and by complainants, and which he has, since that time, that is, since the year 1872, employed in the works consisting of a series of maps or charts of portions of the city of Philadelphia as aforesaid.

13 Defendant saith, however, that when he substituted the said improved key in the year 1872, he continued to use therein certain primary colors—blue, red, yellow, and green—which had previously been employed by complainants and by defendant in their respective works aforesaid, but said colors, as used and explained in said improved key, conveyed, and do convey a materially different technical meaning or value than as employed in complainants' said work; and this defendant, as he is advised and believes, insists that the retention of the colors by him as aforesaid in no way diminishes or affects, or has diminished or affected the profits enjoyed, or which might be, or might have been enjoyed by complainants from the sale or use of their said maps or charts of the city of New York; and that defendant is in no way liable to complainants for printing, publishing, and selling his said works.

And defendant further avers that, during the entire period of time aforesaid; that is to say, from the year 1857, until in the month of July or August, in the year 1874, while defendant was thus publicly and openly publishing and selling his said works, his right so to do was never in any manner, directly or indirectly, to his knowledge, questioned by the said William Perris, or by complainants, and this defendant, under the circumstances aforesaid, is advised and insists that the said complainants are not entitled to any relief against this defendant in a court of equity touching the matters complained of in their said bill of complaint.

JOSHUA PUSEY,
Solicitor for Defendant.

14 And afterwards, to wit, on the fifth day of October, in the year of our Lord eighteen hundred and seventy-five, the said complainants file their testimony as follows, to wit:

Circuit court of the United States, eastern district of Pennsylvania.

WILLIAM G. PERRIS, FOR HIMSELF AND AS administrator of William Perris, deceased, and Henry H. Browne
vs.
ERNEST HEXAMER. } In equity.

THURSDAY, *February* 25, 1875.

Present, Frances Forbes, esq., counsel for complainants; Joshua Pusey, esq., counsel for defendant.

Before me.

WM S. BINNEY, *Examiner.*

WILLIAM G. PERRIS, a witness for the complainants, being duly sworn, deposes and says, in answer to questions by counsel for complainants:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is William G. Perris; age, 39 years; residence in New York City; and occupation that of map publisher and printer, of the firm of Perris & Browne.

Int. 2. Are you one of the complainants above named?

Ans. I am.

Int. 3. Did you know William Perris during his life-time?

Ans. I did; he was my father. He died in January, 1863.

15 Int. 4. Whom did he leave surviving him?

Ans. Myself; my mother, Jane Perris; and my sister, Francis M. Browne, wife of Henry H. Browne.

Int. 5. Did your father die leaving a will?

Ans. He did not.

Int. 6. Who was appointed administrator of his estate?

Ans. I was. I here produce letters of administration granted me. (Letters of administration from the surrogate of Kings County, New York, dated Feb. 21, 1863, offered in evidence, and marked "Complainants' Exhibit 1, W. J. B., examiner.") I also produce a certificate of my appointment as administrator. (Same is offered in evidence, and marked "Complainants' Exhibit 2, W. J. B., examiner.")

Int. 7. At the time of your father's death, was any amicable settlement of his estate attempted?

Ans. It was, before I applied for letters of administration. This is *is* a copy of the agreement, dated Feb. 6, 1863, between myself, my mother, my sister, and her husband. (Same is offered in evidence by complainants' counsel, and marked "Complainants' Exhibit 3, W. J. B., examiner.")

Int. 8. What was your object in making this agreement?

(Objected to.)

Ans. To carry on the business under the name of Perris & Browne.

Int. 9. Was there any other agreement made?

Ans. There was, after the granting of the letters of administration. I produce it. It is dated March 30th, 1863. (Same is offered in evidence, and marked "Complainants' Exhibit 4, W. J. B., examiner.")

Int. 10. What has become of Homer Linder, subscribing witness to Exhibits 3 and 4?

Ans. He is dead.

Int. 11. Do you know the handwriting of Frances M. Browne, Henry H. Browne, and Jane Perris, and have you ever seen them write?

Ans. I know their handwriting, and have seen them write.

Int. 12. Are the signatures attached to Exhibits 3 and 4 in their respective handwritings?

Ans. They are.

Int. 13. Did you yourself sign Exhibits 3 and 4 respectively?

Ans. I did.

Int. 14. Did you believe at the time Exhibits 3 and 4 were made that they conveyed all of your father's property, including the copyright in question.

(Objected to, as the papers should speak for themselves.)

Ans. I did.

Int. 15. Look at the work now shown you, and tell us what you know about it.

Ans. It was published by my father, and is one of the original edition published in 1852.

(Complainants offer said work in evidence, and the same is
16 marked "Complainants' Exhibit 5, W. J. B., exam'r." Complainants also offer in evidence a certificate of the Librarian of Congress of the entry of the copyright of said work, Exhibit 5, and of the deposit thereof in the office of the clerk of the district court for the southern district of New York, and the said certificate is marked "Complainants' Exhibit 6, W. J. B., exam'r.") Defendant's counsel admits

the deposit of the work in the office of the clerk of the district court for the southern district of New York.

Int. 16. Was this work (Exhibit 5) sold to the public after it was so copyrighted?

Ans. It was.

Int. 17. Was your father a resident of the United States at the time this copyright was taken out?

Ans. He was; and had declared his intention to become a citizen.

Cross-examined:

X-int. 1. You say that your father was a resident of the United States; how long had he been a resident before the copyright for this work was taken out?

Ans. He became a resident in April, 1849.

X-int. 2. How do you know that he had declared his intention to become a citizen?

Ans. I have his certificate of naturalization. I have not it with me. I think I went with him when he declared his intention, but I am not certain.

Redirect examination:

Int. 18. Do you know whether he resided in the United States from 1849 to his death?

Ans. He did.

WILLIAM G. PERRIS.

Sworn to and subscribed this 25th day of February, 1875, before me.

W'M J. BINNEY,
Examiner.

Complainants' counsel offers in evidence a book entitled, "Insurance Maps of the City of Philadelphia, surveyed and drawn by Ernest Hexamer, civil engineer and surveyor. Revised edition, vol. 4. Published by Ernest Hexamer, 401 Walnut street, Philadelphia, 1873," and the same is marked "Complainants' Exhibit 7, W. J. B., examiner." Defendant's counsel admits that said work was published and sold by defendant. Complainants' counsel also offers in evidence two maps purporting to be published by Ernest Hexamer, and the same are marked "Complainants' Exhibits 8 and 9, respectively, W. J. B., examiner."

(Objected to as there is no evidence that these last mentioned maps were published and sold by defendant.)

17 I, William J. Binney, special examiner, duly appointed by the circuit court of the United States for the eastern district of Pennsylvania, to take and report testimony in this cause, do hereby certify that on the day named in the deposition hereto prefixed I was attended at No. 227 South Sixth st., in the city of Philadelphia, by the counsel and witness aforesaid; that said witness was duly sworn and examined, and that said deposition was reduced to writing and read to said witness and by him subscribed in my presence October 5, 1875.

WILLIAM J. BINNEY,
Special Examiner.

18 [Internal revenue stamp, 50 c'ts.]

Complainants' Exhibit 1.—*W. J. B., examiner.*

The people of the State of New York, by the grace of God free and independent, to William G. Perris, of the city of Brooklyn, a son of William Perris, late of said city of Brooklyn, deceased, send greeting:

Whereas the said deceased died intestate, and was at the time of his death an inhabitant of the county of Kings, by means whereof the ordering and granting administration of all and singular the goods, chattels, and credits, whereof the said intestate died possessed, and also the auditing, allowing, and final discharging the account thereof doth appertain unto us, and we being desirous that the goods, chattels, and credits of the said intestate may be well and faithfully administered, applied, and disposed of, do grant unto you, the said William G. Perris, full power by these presents to administer and faithfully dispose of all and singular the said goods, chattels, and credits; to ask, demand, recover, and receive the debts which unto the said intestate, whilst living, and at the time of his death, did belong; and to pay the debts which the said intestate did owe, as far as such goods, chattels, and credits will thereto extend and the law require; hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said intestate, within a reasonable time, and return a duplicate thereof to our surrogate of the county of Kings, within three months from the date of these presents; and if further personal property, or assets of any kind, not mentioned in inventory that shall have been so made, shall come to your possession or knowledge, to make or cause to be made, in like manner, a true and perfect inventory thereof, and return the same within two months after discovery thereof; and also to render a just and true account of administration when thereunto required; and we do by these presents depute, constitute, and appoint you, the said William G. Perris, administrator of all and singular the goods, chattels, and credits, which were of the said William Perris, deceased.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness Roswell C. Brainard, esquire, surrogate of our said county, at the city of Brooklyn, the twenty-first day of February, in the year
19 of our Lord one thousand eight hundred and sixty-three, and of our Independence the eighty-seventh.

R. C. BRAINARD,
Surrogate.

(Endorsed:) Complainants' Exhibit 1.—W. J. B., exam'r.
[SEAL.]
[Int.-rev. stamp, 10 cents.]

Complainants' Exhibit 2.—*W. J. B., exam'n'r.*

STATE OF NEW YORK,
Surrogate's Court, County of Kings, ss:

I, Roswell C. Brainard, surrogate of the county of Kings aforesaid, do hereby certify that at the city of Brooklyn, in the county of Kings, on the 21st day of February, in the year of our Lord one thousand eight hundred and sixty-three, at a surrogate's court then and there held, before Roswell C. Brainard, esquire, surrogate of said county, letters of

administration on the goods, chattels, and credits of William Perris, late of the city of Brooklyn, deceased, were duly granted and issued to William G. Perris, a son of deceased, and that the same are still valid and in full force.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court this twenty-first day of February, in the year 1863.

R. C. BRAINARD,
Surrogate.

(Endorsed:) Complainants' Exhibit 2.—W. J. B., exam'r.

Complainants' Exhibit 3.—W. J. B., exam'n'r.

Articles of agreement made the 6th day of February, 1863, between William G. Perris, party of the first part, Frances Mary Browne, and Henry H. Browne, her husband, party of the second part, and Jane Perris, party of the third part.

Whereas William Perris, of the city of Brooklyn, has lately deceased, leaving the said William G. Perris and Frances Mary Browne, his only surviving children, and the said Jane Perris, his widow.

And whereas the said decedent at the time of his death was carrying on business in the city of New York, and was possessed of certain personal property connected therewith.

And whereas the said decedent died without leaving a last will and testament, and the said parties, William G. Perris, Frances Mary Browne, and Jane Perris are the only persons entitled to any share or distribution of his estate.

And whereas the said last-mentioned parties are desirous of making an amicable distribution of the said decedent's estate among themselves without taking out administration papers or reference to their exact legal rights.

Now this agreement witnesseth that for that purpose, and in consideration of the premises, and the further consideration of the surrender and covenants hereinafter made and contained, the parties hereto agree that the entire business lately carried on by the said William Perris be carried on by the said William G. Perris and Henry H. Browne under the name, style, and firm of Perris & Browne.

That the said William G. Perris and Henry H. Browne shall become possessed of and own said business of said decedent, and all the printing materials, books, maps, plates, and every article or thing thereunto in any way belonging in the following proportions, to wit, each one undivided half, subject, nevertheless, to the condition and provisions hereinafter mentioned, that is to say:

All moneys due and accruing to the said decedent at the time of his decease for work of any kind in said business completed, and for work ordered and not completed, shall be collected by the said firm of Perris & Browne, and the proceeds thereof, first deducting all amounts due by said decedent, or on his account at the time of his death, or accruing on the same account prior to the date of these presents, are to be paid to M'r's Jane Perris as her own property.

That, in addition thereto, the said William G. Perris and Henry H. Browne agree hereby to pay to the said Jane Perris the sum of seven dollars each and every week during her natural life, and that said sum of seven dollars per week shall have the preference over all their other claims in or against their said business.

And the said William G. Perris and Henry H. Browne, in consideration of their becoming possessed of said business and property as aforesaid, and the surrender hereinafter mentioned, do jointly and severally covenant with the said Jane Perris that they will truly and faithfully comply with the conditions aforesaid.

And the said Jane Perris, in consideration of the said conditions and covenants, hereby gives, grants, and conveys, and surrenders and relinquishes up to the said William G. Perris and the said Henry H. Browne, all the rights, title, interest, and claim she may have in
21 the said business and property, as widow of the said decedent.

And the said Frances Mary Browne, in consideration of the said gift, grant, and surrender of the said Jane Perris to Perris & Browne of said business and property, and of the said Henry H. Browne becoming possessed of one undivided half of said property and business, hereby gives, grants, and conveys all her right, title, interest, and claim as one of the heirs of said decedent to said property and business to the said firm of Perris & Browne, and hereby relinquishes all claim, right, title, and interest to any further distributive share in her said father's estate to the said Jane Perris.

And the said William G. Perris, in consideration of becoming possessed, as aforesaid, of the one-half of said property and business, hereby surrenders up and relinquishes to the said Jane Perris all further claim, right, title, or interest he may have in and to the estate of his said father.

And the said Jane Perris and the said Frances Mary Browne hereby authorize and empower the said firm of Perris & Browne to demand, receive, collect, and sue for any moneys that may be due and owing or accruing the said William Perris, and to do each and every act as their attorneys that may be necessary in collecting the moneys due said decedent and in paying any claims against said decedent.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

Witness:

WILLIAM GILBERT PERRIS. [L. S.]
FRANCES M. BROWNE. [L. S.]
HENRY H. BROWNE. [L. S.]
JANE PERRIS. [L. S.]

Witnessed February 7, 1863, by—
HOMER LINDER.

CITY AND COUNTY AND STATE OF NEW YORK, *ss:*

On this thirteenth day of October, 1874, before me, personally appeared Jane Perris, William G. Perris, Henry H. Browne, and Frances M. Brow..e, his wife, all to me well known to be the same persons described in and who executed the foregoing indenture, and severally acknowledged the execution of the same, and the said Frances M. Browne, on a private examination by me, made apart from her husband, further acknowledged that she executed the said indenture freely and voluntarily, and without any fear or compulsion of her husband.

[L. S.] ERASTUS F. BROWN,
Notary Public, New York County.

22 STATE OF NEW YORK,
City and County of New York, ss:

I, William Walsh, clerk of the city and county of New York, and

also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Erastus F. Brown, whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 5th day of November, 1874.

[L. S.] WILLIAM WALSH,
Clerk.

The within assignment is this day recorded in the office of the Librarian of Congress, in conformity with the laws of the United States respecting copyrights. Witness my hand and the seal of said office this 13th day of November, A. D. 1874.

A. R. SPOFFORD,
Librarian of Congress.

(Endorsed:) Complainants' Exhibit 3.—W. J. B., examiner.

Complainants' Exhibit 4.—*W. J. B., exam'r.*

Whereas, on the 6th day of February, 1863, the parties hereto, heirs of the estate of William Perris, deceased, entered into an agreement for an amicable division of said estate, without reference to their exact legal rights, which will more fully appear by reference to said agreement, and it was contemplated at the time of the making said agreement it would be unnecessary to obtain administration papers on said estate; and whereas, since the making of said agreement, several parties indebted to said estate have objected to pay their indebtedness, except to an administrator of said estate, and whereas, in consequence thereof, it has become necessary to obtain, and administration papers have been obtained, of the estate, and issued to William G. Perris, as administrator, by consent:

23 Now, this agreement witnesseth that the parties hereto, in consideration of the premises, hereby ratify and confirm said agreement in all matters, notwithstanding the obtaining of said administration papers, and they hereby declare that the purpose of obtaining said administration papers is simply for the collection of said indebtedness, and is to have no effect in altering, changing, or vitiating said agreement; but the same is to remain in as full force and effect as if said administration papers had never been obtained.

In witness whereof, the said parties have hereunto set their hands and seals, this 30th day of March, 1863.

WILLIAM G. PERRIS. [L. S.]
FRANCES M. BROWNE. [L. S.]
HENRY H. BROWNE. [L. S.]
JANE PERRIS. [L. S.]

Witness:
HOMER LINDER.

CITY AND COUNTY AND STATE OF NEW YORK, *ss:*

On this 13th day of October, 1874, before me personally appeared Jane Perris, William G. Perris, Henry H. Browne, and Frances M. Browne, his wife, all to me well known to be the same persons described in and who executed the foregoing indenture, and severally acknowledged the execution of the same; and the said Frances M. Browne, on a private examination by me, made apart from her husband, further acknowledged that she executed the said indenture freely and voluntarily and without any fear and compulsion of her husband.

[L. S.] ERASTUS F. BROWN,
Notary Public, New York Co.

STATE OF NEW YORK,
City and County of New York, ss:

I, William Walsh, clerk of the city and county of New York, also clerk of the supreme court for the same city and county, the same being a court of record, do hereby certify that Erastus F. Brown, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

24 I further certify, that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 5th day of Nov., 1874.

[L. S.] WM WALSH, *Clerk.*

The within assignment is this day recorded in the office of the Librarian of Congress, in conformity with the laws of the United States respecting copyrights.

Witness my hand and the seal of said office, this 13th day of November, A. D. 1874.

[L. S.] A. R. SPOFFORD,
Librarian of Congress.

(Endorsed:) Complainants' Exhibit 4.—W. J. B., examiner.

Complainants' Exhibit 6.—W. J. B., exam'r.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the twenty-eighth day of May, anno Domini 1852, William Perris, of the said district, hath deposited in this office the title of a book or series of maps, the title of which is in the words following, to wit: "Maps of the city of New York, surveyed under direction of insurance companies of said city. By William Perris, civil engineer and surveyor. 1852. Volume 1, comprising the 1st, 2d, 3rd, and 4th wards."

The maps exhibit each lot and building and the classes, as shown by different coloring and characters set forth in the reference, the right whereof he claims as author and proprietor, in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

GEO. W. MORTON,
Clerk of the Southern District of New York.

Work deposited this 28th day of May, 1852.

I, A. R. Spofford, Librarian of Congress, hereby certify that the within is a true copy of the original record of copyright in the Library of Congress.

In witness whereof I have hereto set my hand and affixed the seal of my office this 8th day of February, 1875.

[L. S.]

A. R. SPOFFORD,
Librarian of Congress.

(Endorsed:) Complainants' Exhibit 6.—W. J. B., exam'r.

25 Circuit court of the United States, eastern district of Pennsylvania.

WILLIAM G. PERRIS, FOR HIMSELF AND AS administrator of William Perris, deceased, and Henry H. Browne,
vs.
ERNEST HEXAMER.

FRIDAY, *September* 24, 1875.

Present, Frances Forbes, counsel for complainants.
Joshua Pusey, counsel for defendant.
Before me.

HOWARD PAYSON WILDS,
Special Examiner.

HENRY H. BROWNE, a witness for complainants, being duly sworn, deposes and says, in answer to questions by counsel for complainant:

26 Int. 1. What is your name, age, residence, and occupation?

Ans. Henry H. Browne; age, forty-five; residence, Brooklyn, New York; occupation, publisher of insurance maps.

Int. 2. Are you one of the complainants in this cause?

Ans. Yes, sir.

Int. 3. Have you ever visited the city of London in the prosecution of your business as a map publisher? and if so, state when, and the circumstances connected with said visit, referring only to the insurance maps.

Ans. I was in London in 1870, and while there called upon several insurance companies, partly to see maps of New York of our publishing, which they use, and partly to inquire into the feasibility of making an insurance map of London.

Int. 4. What insurance maps of London, if any, had been published up to that time.

Ans. I found from what I could learn from the companies that they had no insurance map of London.

27 Int. 5. Did you visit the insurance companies to any extent, and did you make inquiries of people likely to know about the existence of such maps?

Ans. Yes.

Int. 6. Did you make an inventory and examination of the effects of M'r William Perris, at the time of his demise, and did you find among the same any insurance maps of London, or of any city of Europe?

Ans. I found no such maps.

(Defendant's counsel objects to the whole of the above testimony of M'r Browne, because of immateriality and not being in rebuttal. Said objections being made at this point by consent.)

Int. 7. Did he have at his decease a large number of maps of different parts of Europe not insurance maps?

Ans. Yes.

(Defendant's counsel make same objection as above.)

HENRY H. BROWNE.

28 Sworn to and subscribed before me the 27th day of Sept., 1875.

HOWARD PAYSON WILDS,
Special Examiner.

Counsel for the respective parties hereby agree that in the admission in folio 51, page 11, of complainants' printed record there was contained, as stated at the time, "defendant's counsel admits that said work was published and sold by defendant within two years previous to the times of the commencement of this suit."

I, Howard Payson Wilds, special examiner, duly appointed by the circuit court of the United States, for the eastern district of Pennsylvania, to take the testimony of witnesses on the part of the complainants, do hereby certify that on the day named in the deposition hereto prefixed, I was attended at No. 41 Park Row, in the city of New
29 York, by the counsel and witness aforesaid; that the said witness was duly sworn and examined, and the deposition was reduced to writing and read to the said witness, and by him subscribed in my presence.

Dated New York, September 27th, 1875.

HOWARD PAYSON WILDS,
Special Examiner.

30 And now, to wit, on the eleventh day of October, in the year of our Lord eighteen hundred and seventy-five, the said respondents filed their testimony, as follows, to wit:

In the circuit court of the United States, eastern district of Pennsylvania, in the third circuit. In equity.

W'm G. Perris, for himself and as administrator of William Perris, deceased, and Henry H. Browne, *vs.* Ernest Hexamer.	No. 99. October sessions, 1874.

Deposition of witnesses on behalf of respondent in the above case, taken by W'm J. Binney, esq., special examiner (appointed by agreement of counsel) to take and report the testimony at his office, No. 227 South 6th street, in the city of Philadelphia, State of Pennsylvania, on the 29th day of April, A. D. 1875.

Present, Joshua Pusey, esq., for respondent; Francis Forbes, esq., for complainants.

Examination of Ernest Hexamer.

Ernest Hexamer, being duly sworn, says:

1. Int. What is your name, residence, and occupation?

Ans. My name is Ernest Hexamer; my residence, 2313 Green street, Philadelphia; and I am an insurance surveyor.

2. Int. Are you the respondent in this case?

Ans. I am.

31 3. Int. When did you commence the publication of insurance maps?

Ans. In the year 1855.

4. Int. Examine that map (shown witness, and marked "Respondent's Exhibit A., W. J. B., examiner,") and state whether that is the first insurance map you published.

(Objected to as immaterial and irrelevant, and as not set up in the answer.)

Ans. Yes.

5. Int. When did you next publish an insurance map, and at what place?

Ans. In 1857, in Philadelphia.

6. Int. Who was with you in the publication of that work?

Ans. Mess'rs Jos. Dietrich and W'm Locher.

(Respondent offers in evidence map marked "Respondent's Exhibit B., W. J. B., examiner.")

7. Int. State if this work, "Exhibit B," is the map you refer to as published by you in 1857.

Ans. Yes.

8. Int. Are the references or key of your work, Exhibit B, identical with the reference or key of complainants' work, Exhibit 5, or otherwise?

Ans. They are identical, with a few exceptions.

9. Int. Please state how they came to be identical or similar.

(Objected to as immaterial and irrelevant.)

Ans. Before making this map (Exhibit B) I called on my friend, William Perris, and told him I intended to make an insurance map of Philadelphia. He was very much pleased at hearing it, and suggested to me to use the same key as he used, for the convenience of the insurance companies who would use my maps. I accepted his offer, and did so.

10. Int. What M'r Perris do you refer to?

Ans. William Perris, senior, who is now deceased.

32 11. Int. Had you any business arrangements with M'r Perris after that? If so, state their nature.

(Same objection as above).

Ans. Yes. M'r Perris made me an offer, which I accepted, to sell my maps (Exhibit B), as my agent in New York. This was in January, 1862. He sold these maps for me there, and I paid him a commission for the sale.

(Respondent offers in evidence a book of original entries, in German, marked "Respondent's Exhibit C., W. J. B., examiner.")

12. Int. State if Exhibit C is a book of original entries.

Ans. It is.

13. Int. Had you any other business transactions with M'r Perris? and if so, state their nature.

Ans. Yes. M'r Perris requested me to sell his insurance maps of New York in Philadelphia. I tried to do so, but failed, because the Philadelphia insurance companies had, at that time, no agencies for the insurance of property in New York, to my knowledge. The companies said that they had not sufficient business to pay them for buying the maps.

14. Int. When did you first change the key or references of your insurance maps of Philadelphia, from those shown in Exhibit B?

Ans. In 1871 or 1872. I then published a new edition with a changed key.

15. Int. Why was that change made?

Ans. I found the former key very imperfect.

(Complainants' Exhibit 7 shown to witness.)

16. Int. State if the key here shown is the changed key you refer to.

Ans. Yes. This exhibit is another volume of the same work. Each volume of the new edition, however, has the same key.

17. Int. Have you known M'r Perri and M'r Browne individually, or as a firm?

Ans. I saw them once, about six years ago, as well as I can remember. I went into their office and introduced myself as publisher of the Philadelphia insurance maps.

33 18. Int. Did they state that they were aware of your publishing those maps?

(Objected to as irrelevant.)

Ans. Yes.

19. Int. Have either M'r Perris (senior) or the firm of Perris & Browne, to your knowledge, published any insurance maps of Philadelphia?

(Same objection.)

Ans. No.

20. Int. State the method employed in the construction or making of these insurance maps.

Ans. The way was, I first measured, from my own survey, the dimensions of each block or square on the city plan, and the angles at the corners of each block; I then measured the frontage and depth of each house and lot; I then went inside to find out the business or occupation carried on in the house; inspected the roof, fire-walls, cornice, shutters, whether of wood or iron, openings, and other details necessary for the information of the insurance companies. After this, the maps were drawn on paper by a reduced scale; the map was then transferred and drawn on stone, and afterwards printed in the usual way. The colorings were done afterwards by stencil.

21. Int. How long would it take you to make a survey of the wards (and their contents) shown in that book, "Complainants' Exhibit 7?"

Ans. From a year and a half to two years.

22. Int. How long would it take you to construct a suitable key?

(Objected to as irrelevant.)

Ans. About 15 minutes.

23. Int. Are these keys or signs arbitrary?

Ans. Yes. They are a matter of taste.

24. Int. How long have you been engaged in the insurance business?

Ans. For more than twenty years last past.

34 25. Int. Calling your attention to the respective keys or references of complainant's Exhibits 5 and 7, state what material difference, if any, to insurance companies exists between "brick or stone stores," and "brick, stone, or iron wholesale stores and warehouses."

Ans. A very great difference in regard to insurance companies' rates exists between the former and the latter. A "store" may be wholesale, retail, or store and dwelling combined. A "wholesale store or warehouse" excludes retail stores and dwellings.

26. Int. State what material difference to insurance companies, if any, there is between "brick or stone dwellings" and "brick or stone buildings."

Ans. The former, as insurance companies understand, is used simply as a residence; the latter may be used as a retail store, dwelling, res-

taurant, &c. In the respective rates of insurance there is a great difference; a brick dwelling house pays 25 to 30 cents per $100 premium; a brick retail store, restaurant, &c., pay from 60 cents to $1.25 per $100 premium.

27. Int. State the difference, as to rates, between "frame dwellings" and "frame buildings."

Ans. The former pay from 60 cents to $1 per $100 premium; the latter may be occupied for any business, and pay from $1 to $5 per $100 premium.

28. Int. Why do you use green in your maps to indicate "specially hazardous?"

Ans. As meaning dangerous, green has long been customarily used by railroad companies and others.

29. Int. Why do you use in Exhibit 7 the sign there prefixed to "sky-lights lighting the top floor only?"

Ans. Because it is the ground-plan of a sky-light.

30. Int. And why the sign prefixed to "sky-lights and well-holes through two or more floors?

Ans. For a like reason; because it is a plan of such a thing.

31. Int. What is the difference, if any, as to insurance rates, between sky-lights lighting the top floor only and sky-lights and well-holes through two or more floors?

35 Ans. The latter class is more comprehensive than the former. In the latter case goods in a building are more exposed; a well-hole being, as it were, an open sky-light, whereas a "sky-light" is covered with glass.

32. Int. Why do you use the signs prefixed to "steam-boiler," horizontal and "upright?"

Ans. Because the sign is, in each case, the ground-plan of such respective boiler.

33. Int. Is there any difference, as to insurance rates, between horizontal and upright boilers?

Ans. Yes, in some cases. The horizontal are the more hazardous.

34. Int. Are you well acquainted with rates and all matters pertaining to insurance and insurance companies?

Ans. I am an expert in such matters. I am employed by more than fifty insurance companies as insurance surveyor; furnishing plans, and sometimes, on request, giving companies my opinion as to risk, and by some of them as inspector.

35. Int. When was your right to publish your insurance maps, or the key contained therein, first questioned, and by whom?

Ans. I think in July or August, 1874, when M'r Wiedersheim came into my office and showed me a letter from M'r Perris, one of the complainants, stating that I had infringed his copyright for his New York insurance maps, and asking me for redress or compensation, or settlement of the matter in some way.

(Complainants' counsel, by consent of respondent's counsel, at this point, enters his objection to interrogatories from No. 25 to No. 34, both inclusive, on the ground that the books in evidence speak for themselves, and that said questions are immaterial.)

Cross-examined by M'r Forbes:

X. 1. Int. Did you ever live in New York city; if so, when, and for whom did you work?

Ans. I did, I think, in 1849, when I first came from Germany
36 to this country. I lived in New York for about three years from that time. I then went to Hoboken, N. J. When I lived in Ho-

boken I worked for M'r Perris (senior) for a short time, between the years 1852 and 1855, about.

X. 2. Int. Was it before you published the maps, Exhibit A?

Ans. Yes.

X. 3. Int. While you worked for M'r Perris, was he publishing maps Exhibit 5, or any insurance maps?

Ans. I think he was then publishing insurance maps. That was then his business. I do not know whether he was publishing maps Exhibit 5.

X. 4. Int. What branch of business were you employed in?

Ans. I made him a few sheets of an insurance map of the city of Brooklyn.

X. 5. Int. Did those maps have a key or index?

Ans. I never saw those maps printed, and therefore do not know.

X. 6. Int. While you were at work there, did you ever see any indexes?

Ans. It is pretty hard to say; it is so long ago.

X. 7. Int. How did you happen to adopt an index or reference to map Exhibit A?

Ans. I had to make an index to explain the work.

X. 8. Int. Were you, at that time, familiar with insurance maps?

Ans. Yes.

X. 9. Int.. Did any other maps than those of M'r Perris have such indexes—colored to represent different classes of buildings?

Ans. I don't remember.

X. 10. Int. Do you remember having seen any other than M'r Perris's at that time or previously?

Ans. I don't remember; it is too long ago. I remember now, M'r Perris showing me a part of an insurance map of the city of London; this was about the time when I made those surveys for him.

37 X. 11. Int. Did not the maps of M'r Perris suggest to you the idea of representing different kinds of houses by a colored reference?

Ans. M'r Perris induced me, as I mentioned in my examination-in-chief, to use these colors in my insurance maps of Philadelphia.

X. Int. 12. State what he said to you, as well as you can recollect.

Ans. I have no recollection.

X. 13. Int. How many interviews did you have with him on the subject?

Ans. Only one; just before I left Hoboken to come to Philadelphia.

X. 14. Int. In what year did you come here?

Ans. In May, 1856 or 1857; I think in the latter year.

X. 15. Int. Why did you come here?

Ans. To make insurance maps.

X. 16. Int. Was any one else present at your interview with M'r Perris when he told you you could use his "reference?"

Ans. Yes. M'r W'm Locher, my partner.

X. 17. Int. Where is M'r Locher now?

Ans. I don't know.

(Complainants' counsel gives notice that at the hearing he shall move to strike out all the questions and answers of this witness, so far as they embrace or relate to conversations with M'r Perris, now deceased.)

X. 18. Int. You speak in your direct examination of interviews with the complainants. State whether or not you were ever requested by them to take a license, under their copyright, and to desist from pub-

lishing insurance maps, with a reference, like that in Exhibit 7 or Exhibit B.

Ans. Yes; I think in July or August, 1874.

X. 19. You have said it would take you but fifteen minutes to make a key; would it not require some thought and study to classify the different risks?

Ans. Not for insurance men.

38 X. 20. Int. That is, not for men who have been many years in the business, and who are familiar with insurance maps?

Ans. Yes. An insurance man needs no experience of insurance maps in order to make such key. Nearly every insurance man has now his own marks and keys.

X. 21. Int. Is it not a great advantage to insurance men to have one general style of key or reference for the different cities in which insurance is made?

Ans. No; there are insurance maps of nearly every large city in the United States, and none of those maps have the same keys. Different publishers, however, have generally the same sort of key for all their own maps.

X. 22. Int. The same signs used in the "reference" are used through the work, are they not?

Ans. Yes.

X. 23. Int. You say you use the color green because it expresses danger. Why do you use the color yellow?

Ans. Because yellow is the color of wood.

X. 24. Int. The sign for a boiler was a black parallelogram; the sign for a sky-light, the plan of a sky-light; the signs for different classes of buildings, red, yellow and green, according to structure of building represented, were they not?

Ans. Yes.

X. 25. Int. Then, are not these signs such as are easily caught and remembered by those unfamiliar with them?

Ans. I make them corresponding, as far as possible, with the nature of the building.

(Question repeated.)

Ans. It depends a great deal on the man.

X. 26. Int. Is this entry of January 2, 1862, page 105 of Exhibit C, the only entry you have been able to find in your book of sales made by M'r Perris for you of your map?

Ans. Yes; except that on page 109 there is an entry of six more works being sent to him, making, with the two before, eight in all. I think he sold more; about three or four more.

39 Redirect by M'r Pusey:

1. Int. Does it really make any material difference what colors or other signs are used in the keys?

Ans. No.

2. Int. State if you have made inquiry to find out your former partner, M'r Locher?

Ans. I have not. I don't know if he is alive or not; I believe him, if alive, to be in Germany.

3. Int. Do you know if he has gone to Germany?

Ans. He has. He went in 1862.

4. Int. Have you heard anything of him since?

Ans. I am told he is building railways in Southern Germany (Wirtemburg.) I am myself a German.

5. Int. Did the insurance map of London, mentioned in your cross-examination, contain a key or reference?

(Objected to because the answer relating to the map of London was not responsive to any question of complainants' counsel, and because no priority of authorship is set up in the answer.)

Ans. I think so.

ERNEST HEXAMER.

Sworn and subscribed this 29th day of April, 1875, before me.

W'M J. BINNEY,
Examiner.

40 MAY 31ST, 1875.

Present, Joshua Pusey, esq., for respondent; Francis Forbes, esq., for complainants.

Examination of Edwin B. Merrill.

EDWIN B. MERRILL, being duly sworn, deposes and says:

1. Int. What is your name, residence, age, and occupation?

Ans. My name is Edwin B. Merrill; I reside at No. 259 South Fourth street, Philadelphia; my age is 60 years; I am secretary of the Association of Fire Underwriters of Philadelphia, and also inspector of said association.

2. Int. How long have you been engaged in insurance business?

Ans. About 15 years.

3. Int. Look at these two books marked Complainants' Exhibits 5 and 7, and state whether there may or may not be a substantial and material difference between the insurance risk on "brick or stone stores," and "brick, stone, or iron wholesale stores and warehouses?"

Ans. There is a difference.

4. Int. State whether there is a difference as to insurance risks between "brick or stone dwellings" and "brick or stone buildings," as a class.

Ans. There is. The difference is that a dwelling is deemed by the insurance fraternity the best class of risks, and is written at the lowest rates. The hazard on brick and stone buildings would depend on their occupation.

5. Int. State the difference between "frame-dwellings" and "frame-buildings."

Ans. There is the same general difference.

6. Int. State whether there is any difference in insurance risks between "horizontal" and "upright" steam boilers.

Ans. The upright boiler is, in most cases, a smaller affair, and used to drive a smaller engine, and is usually less risky than the horizontal.

41 7. Int. Examine critically the two keys of the respective books, and state whether there is or is not a substantial difference running through the keys generally, in regard to the fixing of insurance rates.

Ans. I discover a similarity here, in this respect, that frame-buildings and frame-dwellings are both painted yellow in each key. That is the only similarity that occurs to me now.

(Question repeated.)

Ans. I say again that there is a difference.

8. Int. Could you substitute one key for the other?

(Question objected to as too general and not specifying the nature of the substitution.)

Ans. No; I could not.

Cross-examined by M'r Forbes:

X. 1. Int. What experience have you had in the use of insurance maps?

Ans. Consulting maps, making plans, at least a dozen years, to present to parties, almost daily.

X. 2. Int. How many different keys of insurance maps have you seen during that time?

Ans. The maps of the city of Boston, made by Sanborn, the maps of New York City, and the maps in Philadelphia, by Hexamer. Now for the keys—so far as my memory of those maps serves me, in all the maps, the great general distinctions of risks, I have always used, and the makers have always used, for frame-buildings, yellow. I never saw anything else used.

X. 3. Int. You used yellow because the others used yellow, did you not?

Ans. Yes. And because it was natural.

X. 4. Int. Were these keys that you consulted (of insurance maps) all alike?

Ans. I do not know that they were, in every particular, when you push it out to the last analysis.

42 X. 5. Int. Would a person learning one of them be able to use the others without further study?

Ans. No. He would require to examine into it a little to fully understand it.

X. 6. Int. How much would he have to examine into it?

Ans. Enough to see the points of resemblance and of difference.

X. 7. Int. How long would that take?

Ans. I don't know.

X. 8. Int. It would depend entirely on the ability of the individual, would it not?

Ans. I should suppose so.

X. 9. Int. What do you mean when you say that there is a difference running through the Keys generally, (that is, of Exhibits 5 and 7)?

Ans. I mean that—but I don't know how I can explain it. It explains itself, by looking at the maps.

E. B. MERRILL.

Sworn and subscribed before me, this 31st day of May, 1875.

W'M J. BINNEY,
Examiner.

Examination of E. P. H. Franssen.

EUGENE P. H. FRANSSEN, being duly sworn, deposes and says:

1. Int. What is your residence and occupation?

Ans. My business place is 424 Walnut street; I am vice-president of the Teutonia Fire Insurance Co., and State agent for several New York Fire Insurance Companies.

2. Int. Through what length of time does your knowledge in insurance matters extend?

Ans. I was in the general insurance business for some fourteen years; exclusively in fire insurance, about ten years.

43 3. Int. How long have you known Mr. Hexamer to be publishing these Insurance Maps?

Ans. Nearly as long as I have been in the insurance business.

4. Int. Look at these books marked Complainants' Exhibits 5 and 7, and state if you have examined and compared the respective Keys.

Ans. I have.

5. Int. State the difference, in regard to fixing insurance rates generally, between the two Keys.

Ans. When I see a blue field in Hexamer's Map I know that it indicates brick, stone, or iron, wholesale stores or warehouses. This mark in Exhibit 5, "brick or stone stores," all three classes, would be unintelligible to me unless I read his explanations.

6. Int. Do the two marks in the different works indicate different insurance risks?

Ans. They do.

7. Int. Then you could not substitute, in fixing insurance rates, one blue mark for the other.

(Objected to as leading and immaterial.)

Ans. No. You must adopt either the one or the other.

8. Int. Please compare, in regard to risks, "brick or stone buildings" and "brick or stone dwellings."

Ans. The signs are different. Those of M'r Perris's Map I would not understand without studying the explanation. Moreover, "brick or stone buildings" may be dwellings, but they may be something entirely different in an insurance point of view.

8. Int. Could one of those red signs, (representing brick or stone) in the two Keys, be substituted one for the other, in fixing insurance risks.

Ans. Certainly not.

9. Int. Is there the similar general difference between "frame buildings" and "frame dwellings" as to rates?

Ans. There is.

44 10. Int. In fixing insurance rates, could the key of Mr. Perris's map be substituted, in any case, for that of M'r Hexamer?

Ans. It certainly could not.

11. Int. What is the difference as to "skylights lighting the top floor only," between the two books?

Ans. There is none. According to the invariable rules of design, a skylight must be represented by a figure such as that given in the two books.

12. Int. Is there a difference, as to rates, between upright and horizontal boilers?

Ans. If an upright boiler were as large as a horizontal, there might be no difference; but I have not seen any large upright boilers. There is usually a difference; so that when we find M'r Hexamer's sign of an upright boiler, we assume that it is a small affair, and make the risk less.

Cross-examined by M'r Forbes.

X. 1. Int. How many different kinds of insurance maps have you seen—with regard to keys?

Ans. I remember three; I think I have seen more, however.

X. 2. Int. State what these three are.

Ans. The maps I am in the habit of consulting, almost daily, are M'r Hexamer's, as my business is chiefly local and confined to Philadelphia. I consult, sometimes, the New York maps, as I have an agency in New York; I do not remember the name of the maker; I only see them when

I am in New York, at our agency. The Boston maps I see occasionally, having some business in Boston; I think they are Sanborn's.

X. 3. Int. In looking at M'r Perris's map, (exhibit 5), state whether you would not recognize the brick buildings on that map, at sight, by the color red.

Ans. Just as far as the red color is concerned, I should presume it was a brick or stone building. But the red color alone would not indicate to me the character of the risk.

(Latter part of answer objected to as irresponsive.)

45 X. 4. Int. The color, however, indicates what kind of a building it is, does it not? And if not, what does it indicate?

Ans. It indicates that the building is not frame, for instance. By the mere color I could not classify a building; I should have to know other things about it.

X. 5. Int. Are there any different rates between warehouses and wholesale stores?

Ans. Yes; there are, or may be.

X. 6. Int. Is there any mark or sets of characters by which a risk could absolutely be set on any building, without examination of the neighboring risks?

Ans. I presume that such a mark could be devised, provided that the companies had entire confidence in the judgment and integrity of the surveyor who made the maps. The business routine of companies is different: some examine every risk, however plainly it may appear on the maps, before insuring it; others rely, in great measure, on the maps.

X. 7. Int. Look at M'r Hexamer's map, (complainant's exhibit 7), and state whether it does not require several signs in addition to the color red, for "brick or stone dwellings" to make up the risk.

Ans. The color alone does not give the character of the risk.

X. 8. Int. The same answer applies to all the different colors?

Ans. It does.

X. 9. Int. If you saw the color green on the map after knowing the key, you would, in the first place, consider the building a specially hazardous risk, would you not?

Ans. Yes, generally, I would consider it especially hazardous.

X. 10. Int. But to fully determine the risk, you would require to consult the other signs?

Ans. Yes.

X. 11. Int. Then you could substitute the key of M'r Perris's map for that of M'r Hexamer, as far as the colors go?

46 Ans. No; I could not generally—in regard to specials, M'r Perris using the green color for all classes of "specials," M'r Hexamer using a combination of colors to characterize the different "specials."

X. 12 Int. The "specials" are made up of a combination of yellow and green for frame buildings, and the same for frame sheds, are they not? And are not these colors, the colors representing specially the hazardous and frame buildings respectively?

Ans. Yes.

E. FRANSSEN.

Sworn and subscribed before me this 31st day of May, 1875.

W'M J. BINNEY,
Examiner.

47 *Examination of Forman P. Hollinshead.*

FORMAN P. HOLLINSHEAD, being duly sworn, deposes and says:

1. Int. What is your name, age, residence, and occupation?

Ans. Forman P. Hollinshead; age, 45 years; residence, Philadelphia; occupation, insurance agent.

2. Int. How long have you been engaged in the fire insurance business, and in what capacity?

Ans. For 20 years. Eleven years in the fire insurance agency business, and nine years previously in the office of the Insurance Co. of North America. Officer, 4 years; clerk, 5 years.

3. Int. State how long you have known the respondent, M'r Hexamer, as publisher of these Insurance Maps.

Ans. About as long as I have been in the business.

4. Int. Has he or has he not been publishing these maps in question almost continuously during that time?

Ans. I believe so.

5. Int. What is your experience in regard to fixing rates of fire insurance?

Ans. I have had considerable.

6. Int. Please examine the respective keys of Exhibits 5 and 7, and state whether in any instances, in regard to the fixing of insurance rates, the key of M'r Perris's map could be substituted for that of M'r Hexamer. If there be any exceptions to those instances, please point them out.

Ans. I see here that the sign for skylight lighting the top floor only in M'r Hexamer's is similar to or nearly like the one in Perris's. But I see that there is a difference in that. Perris encloses this in a parallelogram, which is not in Hexamer's. I don't see anything else that is exactly similar to it.

7. Int. Except as to the colors used, is there or is there not a very material difference in the matter of fixing rates of insurance?

Ans. Yes. I could not use the New York key with any satisfaction.

48 8. Int. Please state the nature of the difference, if any, between "brick and stone buildings" as a class, and "brick and stone dwellings" as a class.

Ans. Brick or stone dwellings are generally insured at a uniform rate. Brick or stone buildings vary as to rates, with the nature of their occupation.

9. Int. Is there a similar difference between frame buildings and frame dwellings?

Ans. There is.

10. Int. Would it make any material difference to insurance men what colors are used in the keys of Insurance Maps, and is there any special advantage in employing the colors similar to M'r Perris's?

Ans. Any colors will answer, so long as they are placed in a key.

Cross-examined by M'r Forbes.

X. 1. Int. How many different kinds of Insurance Maps have you seen or used?

Ans. None that I could specify, except Hexamer's. I may have seen other maps in New York, but not examined them.

X. 2. Int. Is your business a local one?

Ans. Yes. Confined to Philadelphia and its vicinity.

X. 3. Int. Has not M'r Hexamer published Insurance Maps with a different key from that on Exhibit 7, to your knowledge?

Ans. I could not say without seeing the old maps. After seeing this (Respondent's Exhibit B) I remember that he did.

X. 4. Int. Do you recall the time or the circumstance of M'r Hexamer changing his map?

Ans. Not distinctly. I did not have the same cause to use the old maps as I do the new, for the reason that I formerly had the assistance of the secretary of the Board of Underwriters, and I have now to depend more than ever upon the maps.

48½ X. 5. Int. Can you recall, without looking at it, any of the signs used in the old key?

Ans. Not without refreshing my memory.

X. 6. Int. You are perfectly familiar with new map of M'r Hexamer, are you not?

Ans. I am generally acquainted with it.

X. 7. Int. Look at page 7 of Respondent's Exhibit B, and state what sort of a building and risk is on the northeast corner of Walnut and Fourth streets.

Ans. I suppose it was brick, stone or iron, but not a frame building—whether it was a store I could not tell, or a dwelling.

X. 8. Int. What sort of a risk is at the northeast corner of Harmony Place and Fourth street?

Ans. If it is green, it looks to me like a specially hazardous building.

X. 9. Int. What sort of a risk is next north of this?

Ans. Some kind of store. It is not framed. It is either brick, stone or iron warehouse. It is not a dwelling—it is not a frame building.

X. 10. Int. Point out a frame building.

Ans. On the southeast corner of Prune and Fifth streets is a frame building. I could not tell whether it is a store or dwelling.

X. 11. Int. Look at page 47 of Exhibit 7, and state what sort of risk is on the southwest corner of Fifth and Callowhill streets.

Ans. I should say it was brick, stone or iron—not frame, and occupied for meeting rooms, for book-bindery, store, and barber shop. I should call it specially hazardous.

X. 12. Int. What kind of a building is at the southeast corner of Julianna and Callowhill streets?

Ans. It is either brick, stone or iron, and the back building seems to be frame.

49 X. 13. Int. How would you describe 432 North Third street on the same page?

Ans. A brick, stone or iron building, and vacant.

FORMAN P. HOLLINSHEAD.

Sworn and subscribed before me, this 31st day of May, 1875.

W'M J. BINNEY,
Examiner.

Counsel for complainants renews his objection to the testimony of M'r Hexamer, so far as the same relates to communications between himself and M'r Perris, now deceased, the same being inadmissible under the statutes of the United States.

50 And afterwards, to wit, on the twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-five, this case having been heard upon the pleadings and proofs, the

following opinion and order was pronounced by the court as follows, to wit:

Circ't c't U. S. In eq'ty.

PERRIS & OTHERS
vs.
HEXAMER.

By the court:

The complainants are the representatives of the author of a map of the city of New York, in which he embodied certain useful improvements, of which he is alleged to have been the inventor. The defendants had made and published a map of the city of Philadelphia, in which like improvements are alleged by the complainants to be embodied as to the latter city.

The author under whom the complainants derive their title never obtained a patent for the alleged invention, but obtained a
51 copyright for the map only. Under the patent conferring this copyright in the map, they alleged that the defendant's map is an infringement of their exclusive right.

The court is of opinion that the bill cannot be sustained.

It is dismissed with costs.

52 And upon the thirtieth day of October, in the year of our Lord one thousand eight hundred and seventy-five, on motion of William J. Binney, esquire, for complainants, an appeal is allowed to the Supreme Court of the United States.

53 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of William G. Perris for himself and as administrator of William Perris, deceased, and Henry H. Browne, complainants, against Ernest Hexamer, defendant, No. 99 of October session, 1874.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] SAMUEL BELL,
Clerk U. S. Cir. Ct., E. D. of P'a.

(Indorsement on cover:) No. 357. William G. Perris for himself and as administrator of William Perris, dec'd, and Henry H. Browne, appellants, vs. Ernest Hexamer. E. Pennsylvania C. C. U. S. Filed 17th February, 1876.

SUPREME COURT

OF THE UNITED STATES,

No 93.

WM. G. PERRIS, for himself and as Adm'r, and HENRY H. BROWNE,

Appellants.

vs.

ERNEST HEXAMER,

Appellee.

BRIEF FOR APPELLANTS.

J. VAN SANTVOORD,
FRANCIS FORBES,
for Appellants.

J. PUSEY,
for Appellee.

New York:
PERRIS & BROWNE, PRINTERS,
No. 164 FULTON STREET.

SUPREME COURT

OF THE UNITED STATES,

No. 93.

WILLIAM G. PERRIS FOR HIMSELF, AND AS ADMINISTRATOR OF WILLIAM PERRIS, DECEASED, AND HENRY H. BROWNE,

Appellants,

vs.

ERNEST HEXAMER,

Appellee.

BRIEF FOR APPELLANTS.

This is an appeal from a decree of the Circuit Court of the Third Circuit, Eastern District of Pennsylvania, in a suit in Equity.

The suit was brought for an infringement by the defendant of a copyright obtained by William Perris, now deceased, on the 28th day of May, 1852, upon his work, entitled "Maps of the City of New York," &c.

The certificate of said copyright, Complainants' Exhibit 6, is printed at pages 16 and 17 of the Record.

The Bill set out the obtaining of the copyright by the author, and his compliance with the law, and that afterwards, to wit: on or about January 21, 1863, he died intestate, and that letters of administration were granted in due form to William G. Perris, one of these appellants; that the only heirs of deceased were his widow, Jane Perris, and

his children said William G. Perris, and Frances Mary Browne, who by articles of agreement, dated February 6th, 1863, transferred to the appellants William G. Perris and Henry H. Browne, certain property, including said copyright and copyrighted work, subject to certain conditions; which transfer was confirmed by a subsequent indenture, dated March 30th, 1863, between the same parties.

The letters of administration, Complainants' Exhibits 1 and 2, are printed at pages 12 and 13 of the Record.

The articles of agreement, whereby the copyright and copyrighted work were conveyed to the appellants, are Complainants' Exhibit 3, printed at pages 13, 14 and 15 of the Record, and Complainants' Exhibit 4, printed at pages 15 and 16 of the Record.

The Answer admits that the said William Perris, deceased, was the author and composer of the work in question, and that the title thereof was duly recorded on the 28th day of May, 1852, and defendant's counsel, during the taking of the testimony, admitted the deposit of the work in the office of the Clerk of the District Court for the Southern District of New York. See his admission beginning at the foot of page 10.

The Answer admits the publication and sale of the infringing work (Complainants' Exhibit 7), but denies that the same infringes any rights or privileges legally belonging to or vested in the appellants; and (see page 6 of Record) sets up permission by the said deceased, William Perris, that defendant might use certain signs or characters employed by said deceased in his copyrighted work.

The Answer and Amendment thereto are printed at pages 5 to 9 of the Record.

The copyrighted work of complainants (the appellants here) is Exhibit 5.

The infringing works of defendant which are complained of, are Exhibits 7, 8 and 9.

Testimony was taken by both parties.

The case was heard on pleadings and proofs, and decided October 23, 1875.

The Opinion and Order or Decree of the Court are printed at pages 29 and 30 of the Record.

ASSIGNMENT OF ERRORS.

The Court below erred :

1. In deciding that the bill of complainants cannot be sustained.

2. In dismissing the bill.

3. In deciding that the matters or things embodied in the copyrighted work of the said Perris and embodied by defendant in his work, were not copyrighted, but that complainants' map only was copyrighted.

4. In deciding that the defendant's map or work does not infringe the copyright of the appellants.

5. In not deciding that the defendant's works, Exhibits 7, 8 and 9, infringe complainants' copyright.

6. In not sustaining the bill, and granting the relief therein prayed for.

POINTS.

I.

CONSTRUCTION OF THE COPYRIGHT OF COMPLAINANTS.

The first question that arises is,—What is the scope of complainants' copyright, and what is covered thereby ?

A copyright is *prima facie* evidence that the person taking it is the author of the work copyrighted, and the burden of proof is on the defendant to show the contrary.

Reed *vs.* Carusi, 8 Law Rep., 412 O. S.—Taney, Ch. J., Md., 1845.

The copyrighted work embraces its whole contents, and the certificate of copyright (see p. 16 of the Record) states that "the maps exhibit each lot and building and the classes as shown by different coloring and characters set forth in the reference, the right whereof he claims as author and proprietor," &c.

The word "Reference" is the name given to that part of the author's work which sets forth the *characters* that designate the classes of the buildings exhibited on the maps; or, in other words, the "Reference" is that part of the author's work by which the other part is read and understood. That part of the author's work which is called therein the "Reference," is necessary to the other parts, and such other parts are also necessary to it, and both taken together make the whole work. If the "Reference" is omitted from the work, those parts which remain are only fragments of the author's work.

The copyright which was obtained by the author extends over his whole work. The title which he gave to his work, to wit: "Maps of the City of New York," &c., &c., does not exclude from his authorship and proprietorship such parts of the work as are not *literally* maps, for the author may give any title he pleases to his book, the title being only a name, and not an exhaustive description of the work which is the subject of the copyright.

Jollie *vs.* Jacques, 1 Blatch., 618.

Furthermore, the characters which are set forth in the "Reference" are expressly mentioned by the author in the title of his work.

The "Reference" is a proper subject for a copyright. The law does not limit copyright protection to any particular sort or description of characters; it only requires that the person obtaining the copyright should be the author and proprietor of the matter copyrighted. Thus—words, sentences, bars and notes of music, maps, designs, etchings, prints or engravings may compose part of copyrighted works. The law of 1831, under which the copyright here in issue was taken out, provides copyright protection for books, maps, charts, musical compositions,

prints, cuts and engravings, and further provides that the author or authors and their executors, administrators or legal assigns, shall have the sole right and liberty of printing, reprinting, publishing and vending such book or books, map, chart, musical composition, print, cut or engraving, *in whole or in part*, for the term, &c., &c. The "Reference" or Key is so essential a part of complainants' copyrighted work, that if it should be omitted or torn out from the work, the value of the work would be seriously impaired, and, in fact, would be destroyed. There is a clear analogy between this "Reference" or Key, and "notes" by an editor of a work.

Lawrence *vs.* Dana, 7 Off. Gaz., 81.

Both refer or have reference to other parts of the work. To say that that printed part of a work which consists of a "Reference" or Key by which other parts of the work are read, explained or determined, is not included in a copyright, is to say that "notes" to a work, by an author or an editor thereof, are not subjects of a copyright. But it has been expressly decided in Lawrence *vs.* Dana, that "notes" *are* proper subjects of copyright protection. And it has also been decided that even the plan of a book as connected with the arrangement and combination of materials, and the mode of displaying and arranging the subject, may be lawfully copyrighted.

Green *vs.* Bishop, 1 Cliff., 199.

Whether there has been an infringement of a copyright does not necessarily depend upon the quantity taken; it often depends upon other considerations, such as the value of the parts taken and their importance to the sale or use of the original work, or whether so much is taken that the value of the original is sensibly lessened, or the labors of the author are substantially to an injurious extent appropriated.

Folsom *vs.* Marsh, 2 Story, 100.
Green *vs.* Bishop, 1 Cliff., 186.

A chart containing a series of diagrams interspersed with printed instruction as to the mode of using them in

taking measurement for and cutting garments, is the subject of copyright.

Drury *vs.* Ewing, 1 Bond, 540.

There may be a valid copyright even in the plan of a book as connected with the arrangement and combination of the materials, and the mode of displaying and illustrating the subject, although all the materials employed and the subject of the work may be common to all other writers.

Green *vs.* Bishop, 1 Cliff., 186.
Emerson *vs.* Davies, 3 Story, 768.
Boucicault *vs.* Fox, 5 Blatch., 87.

See also, Lawrence *vs.* Dana, 7 Off. Gaz., 81, where it is held, that the editor of a subsequent edition cannot borrow from citations introduced into a previous edition of the same work by another editor without infringing the copyright for them.

Piracy is not a question of quantity.

Gray *vs.* Russell, 1 Story, 11, 19.
Folsom *vs.* Marsh, 2 Story, 115.
Story's Exors. *vs.* Holcombe, 4 McLean, 309.
Green *vs.* Bishop, 1 Cliff., 200.

In the case of Daly *vs.* Palmer, 6 Blatch., 256, which was for an infringement of a Drama, Judge Blatchford says:

> "Movement, gesture and facial expression, which "address the eye only, are as much a part "of the dramatic composition as is the spoken "language which addresses the ear only, and that "part of the written composition which gives "direction for the movement and gesture, is as "much a part of the composition, and protected "by the copyright, as is the language prescribed "to be uttered by the characters."

The case of Daly *vs.* Palmer supports the present case. In that the Court found that even the stage directions "for the movement and gesture" of the drama were part

of the composition of the work and were protected by the copyright.

Now, in the present case, the characters contained in the "Reference" are certainly as important and as necessary for the reading and understanding of the other parts of Mr. Perris' Work, as the stage directions are for the proper reading and representation of the dramatic work.

Pirating the wood engravings in a book as illustrations of the stories, and using them in a book as illustrations of different stories, is an infringement of copyright. See Bogue vs. Halston 10 Eng. Law & Eq. 215. — 5 De Gex & Smale (quoted in Story's Eq. Jurisprudence. 11th Ed. ch. 23. § 939 p. 138.

The above considerations show that that part of Mr. Perris' Work which is contained in the "Reference" so called, is covered and protected by his copyright, and that the Circuit Court erred in deciding that it was not covered thereby.

II.

The defendant has used, in works published and sold by him, parts of the system of notation and "Reference" contained in Mr. Perris' copyrighted work.

Complainants' Exhibit 5 is a copy of Mr. Perris' copyrighted work, and Exhibit 6 is a certificate of the deposit of the work.

Complainants' Exhibit 7 is a copy of defendant's infringing work. Defendant admits the publication thereof by him. See pp. 11 and 18 of Record.

Defendant's Exhibits A and B are copies of other infringing works published and sold by defendant in 1855 and 1857.

Defendant admits, at foot of p. 10 of Record, that the Complainants' Work, Exhibit 5, was deposited in the Office of the Clerk of the District Court for the Southern District of New York.

Defendant's witness, Merrill, testifies that there is some similarity between Defendant's Work, Exhibit 7, and Complainant's copyrighted work. He says, in Ans. 7, p. 24, of Record, as follows:

" 7. Int.—Examine critically the two Keys of the re-
" spective books, and state whether there is or is
" not a substantial difference running through
" the Keys generally in regard to the fixing of
" insurance rates?

" Ans. I discover a similarity here, in this respect,
" that frame-buildings and frame-dwellings are
" both painted yellow in each Key. That is the
" only similarity that occurs to me now."

Defendant's witness, Franssen, testifies by his Ans. 11, p. 26 of Record, that Defendant's Work, Exhibit 7, uses Complainants' " Reference" or Key for " skylights lighting " the top floor only." He says:

" 11. Int.—What is the difference as to 'skylights
" lighting the top floor only,' between the two
" books?"

" Ans. There is none. According to the invariable
" rules of design, a skylight must be represented
" by a figure such as that given in the two books."

See also Franssen's answers x 3 and x 9, p. 27 of Record.

Defendant's witness, Hollinshead testifies, on p. 28, of Record, as follows, as to the similarity of part of Defendant's Work with Complainants':

" 6. Int.—Please examine the respective Keys of
" Exhibits 5 and 7, and state whether in any in-
" stances, in regard to the fixing of insurance
" rates, the Key of Mr. Perris' map could be sub-
" stituted for that of Mr. Hexamer. If there be
" any exceptions to those instances, please point
" them out.

" Ans. I see here that the sign for skylight lighting
" the top floor only in Mr. Hexamer's is similar to or
" nearly like the one in Perris's. But I see that
" there is a difference in that. Perris encloses
" this in a parallelogram which is not in Hexa-
" mer's. I don't see anything else that is exactly
" similar to it."

Hollinshead's cross-examination proves that Defendant's "Reference" or Key is substantially the same in several parts thereof with that in Complainants' Work.

A comparison of the Complainants' and Defendant's Works, shows that the Defendant has copied from the the Complainants' work the *system* of notation of risks, and has also copied several of *the characters* of the "Reference." The *variations* he has introduced into his work will not avail to relieve him from the charge of piracy.

Daly *vs.* Palmer, 6 Blatch., 256.
D'Almaine *vs.* Boosey, 1 Yonge & Collyer, 288.

The colors and some of the other signs express the same meaning in the books of both Complainants and Defendant. The plan is also the same.

See testimony of Merrill, p. 24 of Record, 7 Ans.
" " Franssen, p. 26, 11 Int. & Ans.
" " " p. 27, X 3 Int. & Ans.
" " " p. 27, X 9 Int. & Ans.

Hollinshead, at pp. 28, 29 of Record, shows by actual tests that the References in Defendant's and Complainants' Works are essentially the same, and that Defendant uses Complainants' (Perris) system and characters. See Hollinshead's answers 6 to 10, and cross-examination from 7 to 13.

See testimony of Hexamer, p. 19, Int. & Ans. 8.

It is apparent that Mr. Hexamer has *extended* the "Reference" in his work and the notation of risks; but such extension or addition, as long as the basis of the work belongs to complainants, will not avail him.

The question of infringement in this cause is analogous to that in the case of a drama or musical composition; the parts which peculiarly characterize the works of both parties being adapted to the senses and such as readily catch the eye.

In case of Daly *v.* Palmer (6 Blatch., 256), Judge

Blatchford quotes the English case of D'Almaine *v.* Boosey (1 Younge and Collyer's Ex., R., 288) :—

> " It is admitted that the defendant has published
> " portions of the opera containing the melodious
> " parts of it ; that he has also published entire
> " airs ; and that in one of his waltzes he has in-
> " troduced seventeen bars in succession containing
> " the whole of the original air, although he adds
> " fifteen other bars which are not to be found in it.
> " Now, it is said that this is not a piracy : first,
> " because the whole of each air has not been
> " taken ; and secondly, because what the plaintiffs
> " purchased was the entire opera, and the opera
> " consists not merely of certain airs and melodies,
> " but of the whole score. But, in the first place.
> " piracy may be of *part* of an air as well as of the
> " whole ; and, in the second place, admitting that
> " the opera consists of the whole of the score, yet,
> " if the plaintiffs were entitled to the whole, *a*
> " *fortiori*, they were entitled to publish the melo-
> " dies which form a part.
>
> * * * * * *
>
> " It is the air or melody which is the invention of the
> " author, and which may in such case be the sub-
> " ject of piracy ; and you commit a piracy, if, by
> " taking not a single bar, but several, you incor-
> " porate in the new work that in which the whole
> " meritorious part of the invention consists. * *
> " * * * The original air requires the aid of
> " genius for its construction, but a mere mechanic
> " in music can make the adaptation or accompani-
> " ment. Substantially, the piracy is *where the*
> " *appropriated music, though adapted to a different*
> " *purpose from that of the original*, may still be
> " recognized by the ear. The adding variations
> " make no difference in the principle."

Judge Blatchford, in Daly *vs.* Palmer, held that these views were " applicable to the case of a dramatic

" composition designed for public representation.
" Such a composition, when represented, excites
" emotions and imparts impressions not merely
" through the medium of the ear, as music does,
" but through the medium of the eye as well as
" the ear. * * * * * *

" As in the case of the musical composition the air is
" the invention of the author, and a piracy is com-
" mitted if that in which the whole meritorious
" part of the invention consists is incorporated in
" another work without any material alteration in
" sequence of bars, so in the case of the dramatic
" composition, designed or suited for representa-
" tion, the series of events directed in writing by
" the author in any particular scene is his inven-
" tion, and a piracy is committed if that in which
" the whole merit of the scene consists is incor-
" porated in another work without any material
" alteration in the constituent parts of the series
" of events or in the sequence of the events in
" the series. * * * * * *

" It is a piracy if the appropriated series of events,
" when represented on the stage, although per-
" formed by new and different characters, using
" different language, is recognized by the spec-
" tator, through any of the senses to which the
" representation is addressed, as conveying sub-
" stantially the same impressions to, and exciting
" the same emotions in the mind in the same
" sequence or order."

The signs and plan shown in this work, and running through the same, convey a certain meaning to the mind by the senses; the defendant's signs and plan carry the same meaning.

See testimony of Hollinshead, pp. 28 and 29 of Record.

The books themselves prove it by a simple inspection.

The defendant Hexamer, the appellee here, confesses that he obtained from Mr. Perris the idea of the system of notation and "Reference," or Key, which he used in his works. He says, p. 19 of Record, as follows :

"8. Int.—Are the References or Key of your Work, "Exhibit B, identical with the Reference or Key "of Complainants' Work, Exhibit 5, or other- "wise ?

"Ans.—They are identical, with a few exceptions.

"9. Int.—Please state how they came to be identical "or similar.

"Ans.—Before making this Map (Exhibit B) I called "on my friend, William Perris, and told him I "intended to make an Insurance Map of Phila- "delphia. He was very much pleased at hearing "it, and suggested to me to use the same Key as he "used, for the convenience of the insurance com- "panies who would use my Maps. I accepted his "offer, and did so.

"10. Int.—What Mr. Perris do you refer to ?

"Ans.—William Perris, Senior, who is now deceased."

Also on p. 22 of Record Hexamer says, as follows :

"x. 9. Int.—Did any other Maps than those of Mr. "Perris have such Indexes—colored to represent "different classes of buildings ?

"Ans.—I don't remember."

He admits in his answer to cross-interrogatory 22, p. 23 of Record, that the same signs used in the "Reference" are used throughout the work. He tries to detract from the merits of Mr. Perris' system and "Reference" by saying, Ans. 22, p. 20 of Record, that it would take him about fifteen minutes to construct a suitable Key.

This only shows how much merit belongs to the original conception of Mr. Perris, who was the first to produce such maps. It is easy enough to add to a thought once expressed.

Mr. Hexamer has not shown himself an *author*. To be such he must by his own intellectual labor,

applied to the materials of his composition, produce an arrangement or compilation *new* in itself.

Gray *v.* Russell, 1 Story, 11.

A mere inspection of the two works will show that Mr. Hexamer's work is not new, but a copy.

If Mr. Hexamer's work is an improvement on Mr. Perris' makes no difference.

Dowry *v.* Ewing, 1 Bond, 540, 549.

If a material part of the copyright publication is used, the piratical work will be adjudged an infringement, even though it may be in some respects an improvement.

Dowry *v.* Ewing, above, and cases before cited.

Maps proper or surveys are but the result of the labor of survey, and any one has a right to go over the same ground and to do the same labor, ascertaining boundaries, extent, &c. But in the book of maps under consideration there is an additional element not found in surveys merely, viz., a Key or "Reference" easily caught by the eye, and analogous to the effect of music on the ear, or the drama on the eye. It is an appeal to the senses, by word signs and characters.

Bartlett *v.* Crittenden, 5 McLean, 32, 39.
Barfield *v.* Nicolson. 2 Sim. and St, 1.
Green *v.* Bishop, 1 Cliff., 199.
Lawrence *v* Dana, 7 Off. Gaz., 91, (foot of page, 2d column.)
See also cases before cited.

III.

MR. PERRIS WAS THE AUTHOR OF INSURANCE MAPS, INCLUDING THE REFERENCE AND SYSTEM OF NOTATION.

None appear to have existed before his time.

Their great assistance to insurance men can be seen by a mere glance at the maps.

The spirit of our laws is to protect the product of labor and thought.

Judge Clifford says, "Elementary writers and jurists concur that the law does not require that the subject of a book should be new or the materials original, in order to entitle the author to a copyright; and all appear to admit that there may be a valid copyright in the *plan* of a book, as connected with the arrangement and combination of materials, and the mode of *displaying* and *arranging* the subject, although all the materials employed, and the subject of the work may be common to all other writers."

Green *v.* Bishop. 1 Cliff., 199.

This book of Mr. Perris went beyond the requirements of the law in being an entirely new work (as entirely new as anything can be in book-making), a work at the time unique. Mr. Perris, therefore, is entitled to a copyright on his work as a whole. We do not claim that no one else can make maps; but only that no one can make a book of insurance maps copying any part of Mr. Perris' work. That which makes up the thing copyrighted is the genius and labor ~~enclosed~~ in the work. The law does not confine the copyright to the *first* author, but gives it to any one who *is* an *author* and not a copyist.

Defendant's answer (see p. 5 of Record.) admits that Mr. Perris was the author and composer of the work in question.

IV.

The Defendant sets up in his answer that he had a license from Mr. Perris to use the "Reference" or Key, but fails to prove such license.

He says, answers 8, 9 and 10, p. 19 of Record:

"8. Int.—Are the References or Key of your Work,
"Exhibit B, identical with the Reference or Key
"of Complainants' Work, Exhibit 5, or otherwise?
"Ans.—They are identical, with a few exceptions.

" 9. Int.—Please state how they came to be identical
" or similar.
" Ans.—Before making this Map (Exhibit B) I called
" on my friend, William Perris, and told him I
" intended to make an Insurance Map of Phila-
" delphia. He was very much pleased at hearing
" it, and suggested to me to use the same Key as
" he used, for the convenience of the insurance
" companies who would use my Maps. I accepted
" his offer, and did so.

" 10. Int.—What Mr. Perris do you refer to?
" Ans.—William Perris, Senior, who is now deceased."

But that statement is not evidence of license from the author, for the reason that it is not competent in view of Section 858 of the Revised Statutes, for the defendant to give evidence of any alleged transactions with or statements by the deceased author, the defendant not having been called to testify thereto by complainants nor required to testify thereto by the Court.

Notice of motion to strike out this testimony was duly given. See p. 22 of Record.

Again, the Act of 1834, as to copyrights, requires that assignments of copyrights must be in writing, and if the defendant really had a license, such license terminated and was canceled by notice from the complainants.

(See testimony of Hexamer, Int. and Answer 35, p. 21 of Record.)

Defendant shows no written instrument granting him a right or license to use Mr. Perris' copyright, and indeed does not pretend that he had any other than a verbal license. But even if it were true that he had a verbal license from the author it ought not to prevail against the sale of the copyright which was made by the agreements Complainants' Exhibits 3 & 4, p. 13, 14 & 15 of Record.

The defence set up in the answer " that the retention " of the colors by him (defendant) as aforesaid in no way " diminishes or affects the profits enjoyed by complainants " from the sale or use of their said maps or charts of the " City of New York," is not a valid defence because the

"Reference" and its characters are applicable to all maps of cities or places containing buildings to be designated and described, as is conclusively shown by the fact, that the defendant, (the appellee here) used the same thing in maps of Philadelphia.

Furthermore, the question, whether or not the infringer of the copyright diminishes the profits of the author by his infringement is not relevant to the issue here.

The decree of the Circuit Court ought to be reversed, and the prayer of the Appellants granted as prayed for in their Bill.

J. VAN SANTVOORD,
FRANCIS FORBES,
for Appellants.

In the Supreme Court

OF THE UNITED STATES.

NO. 93.

(COPYRIGHT CAUSE.)

William G. Perris, et al., *Appellants.*

(Complainants below.)

VS.

Ernest Hexamer, *Appellee.*

(Respondent below.)

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF ARGUMENT FOR APPELLEE.

JOSHUA PUSEY,
Counsel for Appellee.

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(Complainants below.)

vs.

ERNFST HEXAMER, *Appellee.*
(Respondent below.)

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF FOR APPELLEE.

STATEMENT.

Appellants' copyright was entered May 28, 1852, and is for a map (used by fire insurance companies to aid in determining "risks") of the city of New York.

The general characteristics of the various classes of structures and certain details pertaining thereto, are designated in said work by arbitrary colors and signs, the meanings of which are explained by a reference or key prefixed to the map.

Hexamer, the appellee, (in conjunction with two other persons) in the years 1857 and 1858, made and copyrighted a like insurance map of the city of Philadelphia, in which were used the same colors and signs with significations, explained by a key, identical with those of Appelants' New-York City map. (Complainants' Exhibit 5.)

Hexamer published and sold his maps continuously from 1858 until, in the year 1872, he issued an improved edition thereof, (Complainants' Exhibit 7,) wherein he made use of, in some instances different signs, and, in others, the same signs and colors as in his previous maps, but with significations materially different from those theretofore used.

He has, since 1872, continued to publish and sell his maps containing the new key only.

It was not until the month of July or August, 1874, that his right to publish any of his maps was questioned, although Appellants were aware of the publication thereof in the year 1867, and Perris, the author, from whom they derive title, knew of the same when they were first published. In fact, the colors and signs of Hexamer's 1857–58 map were adopted by him with the full knowledge, consent and approbation of said Perris; and, in the year 1872, he, Perris, acted as Hexamer's agent for the sale of the latter's Philadelphia maps to New-York insurance companies.

See testimony of E. Hexamer, pp. 19, 20; E. Franssen, p. 26, and F. P. Hollinshead, p. 28 of the Transcript of Record.

POINTS.

I.

The Court below properly decided that the Bill could not be sustained; because Appellants' copyright is for a Map of the City of New York, whilst that of Appellee is of the City of Philadelphia, and the publication of the latter cannot, in any degree, prejudice the sale of the former, or otherwise work injury to the proprietors of the copyright.

Does the alleged infringing publication "tend to prejudice the sale, or diminish the profits, or supersede the objects," of the copyrighted work? affords the touchstone for determining the question of infringement in copyright cases.

See Curtis on Copyright, p. 240, and Folsom vs. Marsh, 2 Story, 116.

The Reference in Appellants' work, (as the word indicates,) *refers to the particular Map* for the purpose of rendering the latter intelligible for the special objects intended. Either is useless without the other—so in so far, like the elements of a patented combination. But it

cannot be seriously urged that Appellants' copyright is in the nature of a Patent Right so broad as to cover the invention, idea, or system, of the author.

Courts have sometimes supposed that the same rule of decision should be applied to a copyright as to a patent for a machine * * * but the language of the respective Acts of Congress making provision for the protection of such rights is different.

> Lawrence vs. Dana, (Clifford, J.) Official Gazette of the Pat. Off., vol. vii., p. 90, near foot of 2d column.

See, also, the opinion of the Court below in this cause, p. 30 of Record.

An author's exclusive property consists only in the right to multiply copies of his work, and enjoy the profits therefrom, and not in an exclusive right to his conceptions.

> Stowe vs. Thomas, 2 Wall, Jr., 547.
> Lawrence vs. Dana, (Clifford, J.) Official Gazette of the Pat. Off., vol. vii., p. 90.

There can be no copyright in a plan, *distinct from the work itself*, any more than there can be of an idea.

> Story's Exr's vs. Holcombe, 4 McLean, 361.

Thus, in illustration, a life of Jackson, of a certain plan or arrangement, cannot infringe the copyright of a life of Washington in which the same plan or arrangement is adopted :

Or, a copyrighted dictionary of a peculiar plan, or with arbitrary marks to point out pronunciation, accent, etc., cannot be infringed by a dictionary on an identical plan, with like marks, but of another language.

There is no novelty in the use of references or keys for the purpose of explaining the meaning of arbitrary marks, signs, colors, etc., in maps and charts.

Perris may have been the first to construct or invent a map peculiarly designed for, and adapted to the use of, Fire Insurance Companies. And his copyrighted map has doubtless rendered important service to Underwriters in aiding them to fix rates of insurance on buildings in the City of New York. But the value of the work to them consists in the map itself, wherein the various buildings are laid down.

The reference is merely incidental, bearing to the map a relation similar, for example, to that of a key or latch string to the house.

There is no analogy between a map and a dramatic composition represented on the stage.

The right to the sole liberty of printing or copying a drama is one thing; that of representing it on the stage is another, specifically granted by the statute.

No copyright can exist in those dramatic actions, events, etc., *per se*, which address themselves to the eye or the ear; but only in connection with the particular composition.

Nor is there any analogy between a map and a musical composition which may be adapted to be performed on various instruments.

Suppose, however, an author should copyright, as a musical composition, an entirely new melody; the different kinds of notes and marks, in order to be readily caught by the eye, being differently colored—the semibreves red, minims blue, crotchets yellow, quavers green, and so on.

Can it be questioned that a subsequent composer (in the absence of any valid Patent Right taken out by the author for his new system) has the right to employ the identical colors to designate the same ideas in musical notation in a new and different composition?

II.

Appellee's "Reference" in his 1872 Maps (Complainants' Exhibit 7,) does not, in fact, infringe Appellants' Copyright.

A comparative analysis of the resembling parts of the respective references, or keys, shows that

IN PERRIS' (Complainants' Exhibit 5.)	IN HEXAMER'S (Complainants' Exhibit 7.)
BLUE.—Denotes brick or stone stores, (marks being added to denote the different classes of such stores.)	BLUE. — Brick, stone, or *iron wholesale stores and warehouses* (no marks for classes.)
RED. — Brick or stone dwellings, (with marks for the different classes.)	RED. — Brick or stone *buildings*, (no marks for classes.)
YELLOW.—Framed dwellings.	YELLOW;—Frame *buildings*, (no marks for classes.)
GREEN.— Specially hazardous, (with marks for classes, brick and framed.)	GREEN.— Specially hazardous, *brick or stone buildings.*
SKYLIGHTS lighting more than the top floor.	SKYLIGHTS and *well holes* through two or more floors.
BOILERS for Steam Engines.	STEAM BOILERS horizontal (a different sign being used for *upright* steam boilers.)
SKYLIGHTS lighting the top floor only.	Same as Perris', except that Perris encloses his skylight in a parallelogram.

This last sign, however, is but the usual plan of a skylight.

The testimony of Hexamer (Ans. to Int's 25 to 33 inclusive, pp. 20-21, of Record); of Merrill (Ans. to Int's 3 to 8 inclusive, p. 24); of Franssen (Ans. to Int's 5 to 12 inclusive, p. 26); and of Hollinshead (Ans. to Int's 5 to 10 inclusive, p. 28), shows that the colors and characters of Perris' and of Hexamer's

(1872) References respectively, convey ideas vitally different; so that one Reference or Key could not be substituted for the other in fixing insurance rates.

Hexamer, at the time his testimony was taken, had been in the insurance business for twenty years; was then employed by more than fifty insurance companies as surveyor, by some as inspector, giving opinions as to "risks," etc.

Merrill had been in the insurance business for fifteen years, and was Secretary of, and Inspector for, the Philadelphia Board of Underwriters.

Franssen had been in the same business for ten years, and was Vice-President of the Teutonia Fire Insurance Company.

Hollinshead had been twenty years in business as an Insurance Agent.

III.

The rule, *De minimis non curat Æquitas*, well applies in this cause.

Cases frequently arise in which though there is some injury, yet Equity will not interfere by injunction to prevent the further use, as when the amount copied is small and of little value, if there is no proof of bad motive; or where there

has been long acquiescence in the infringement, or culpable laches and negligence in seeking redress, especially if it appear that the delay has misled the Respondent.

Lawrence vs. Dana, vol. vii., Offiical Gazette of Pat. Off., p. 91, 2d column, foot of 1st paragraph.
Curtis on Copyright, p. 326, and Baily vs. Taylor, (1 R. & M. 73) therein noted.

The method of constructing these Insurance Maps is described by Mr. Hexamer, in answer to Int., page 20, of the Record, as follows:

"The way was, I first measured from my own survey, the dimensions of each block or square on the city plan, and the angles at the corners of each block. I then measured the frontage and depth of each house and lot. I then went inside to find out the business or occupation carried on in the house; inepected the roof, fire-walls, cornice, shutters, whether of wood or iron, openings and other details necessary for the insurance companies. After this, the maps were drawn on paper by a reduced scale; the map was then transferred and drawn on stone and afterwards printed in the usual way."

This required great outlay and months, even years, of tedious labor (Ans. to Int. 21, p. 20, Record.)

Up to this point, Appellants could have no possible claim for infringement of their copyright.

"The colorings were done afterwards by stencil."

It is purely an arbitrary affair, of no more moment than the selecting of the color of paint to be applied to a house, as to what particular colors or shades shall be

chosen to denote the characteristics of the classes of buildings shown on the map.

For this no original thought or genius is requisite; the colors may be taken at random, and it would make no practical difference whatever.

"Any colors will answer so long as they are placed in a key," says Hollinshead, in Answer to Int. 10, p. 28, Record.

The adoption by the Appellee of the like colors and signs to express equivalent meanings with those of Appellants' work, is therefore too insignificant a matter to demand the interference of a Court of Equity.

Courts must look to the nature and objects of the selections made, the quantity and value of the materials used and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.

Lawrence vs. Dana, ut supra, p. 91, citing Folsom vs. Marsh.

IV.

Even if the infringement of Appellants' copyright be considered as fully made out, yet, agreeably with the maxim, *Vigilantibus non dormientibus*

Æquitas subvenit, appellants have no standing in a Court of Equity, by reason of their laches and the assent and laches of him from whom their title is derived, as mentioned in the Answer pp. 8 and 9, of Record.

It was not until August 1874, after Hexamer had been publishing his map for a period of sixteen years, that his right so to do was questioned.

Curtis on Copyright, p. 319.
Baily vs. Taylor, 1 Russ & M., 73.
Cooper vs. Mathews, 8 Law Rep., 417, 418 and 419.
Lawrence vs. Dana, ut supra; and cases there cited.

Every presumption that can fairly be made will be made against a stale demand.

The principle [of discountenancing laches] is peculiarly applicable to motions for injunction in cases of patent and copyright, and has been uniformly applied to them.

The injunction will not be granted against a party who has been led into the publication by the encouragement and acquiescence of the author, or where the copyright is admitted, if the violation be of long continuance.

1 Chitty's General Practice, 780.

Baily vs. Taylor, 1 Russ & M., 73, before the Master of the Rolls is, in so far as relates to the foregoing points III and IV, analogous in principle.

In 1824, plaintiff filed his bill to restrain defendant from publishing a work in which he had copied 13 tables of certain calculations, which had been issued in three works, one in 1802, one in 1808, and the third in 1810. The defences were, long acquiescence of plaintiffs in the alleged piracy; the very small proportion which the tables said to be pirated bore to the whole mass of plaintiff's book, and the facility with which the defendant might acquire a title to the tables.

The Court said: "Considering the very inconsiderable part of the defendant's work which is complained of, and that this may be calculated in a few hours so as to give the defendant an unquestionable right to its republication; and considering the difficulty which would be imposed upon the master if an account were directed, of ascertaining what part of the defendant's profit ought to be attributed to the plaintiff's tables; and considering also the distance of time at which the injunction is now sought, being nine years after the publication of defendant's second edition, I am bound to refuse the injunction."

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